TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted]

[redacted]

THE UNITED STATES OF [redacted], APPELLANT,

vs.

READING COMPANY, PHILADELPHIA AND READING RAILWAY COMPANY ET AL.

FILED [redacted]

[redacted]

READING COMPANY, PHILADELPHIA AND READING RAILWAY COMPANY ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA.

FILED JANUARY 4, 1916.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

VOLUME II.

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(25052)
(25071)

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Order Appointing Examiner and Fixing Time for Taking Testimony.

In the District Court of the United States, Eastern District of Pennsylvania.

The United States of America, petitioner,
v.
The Reading Company and Others, defendants.

And now, January 27, 1914, upon motion of Frederic R. Coudert, Esq., special assistant to the Attorney General, and upon filing the affidavit of said Frederic R. Coudert verified January 27th, 1914, and it appearing from said affidavit that good and exceptional cause therefor exists; it is hereby

Ordered and decreed, That Charles H. Guilbert be, and he hereby is, appointed examiner in the above cause in accordance with the rules of this court, for the purpose of taking the testimony therein, either within or without this district, and to report the same to the court according to the rules and practices thereof; And it is further

Ordered, That the depositions of Robert W. de Forest and George O. Waterman, as witnesses for the petitioner, and of Edward Hamlin, Louis Zepfler, Frederic Parker, and William Unruh, as witnesses for the defendants, and of any other witnesses that may be produced by either party be taken before said examiner at such times and places within or without the district as he may appoint; And it is further

Ordered and decreed, That the taking of such depositions on behalf of the petitioner be proceeded with not later than the 9th day of February, 1914, upon three days' notice to the defendants, and that the testimony to be taken on behalf of the petitioner be concluded not later than the 10th day of March, 1914; that the testimony on behalf of the defendants be proceeded with not later than the 17th day of March, 1914, on three days' notice to the petitioner, and concluded not later than the 24th day of April, 1914, and that any testimony in rebuttal on behalf of the petitioner be proceeded with not later than the 27th day of April, 1914, on three days' notice to the defendants, and be concluded not later than the 6th day of May, 1914, and that a transcript of all of the testimony taken be filed in this court not later than the 23d day of May, 1914; And it is further

Ordered and decreed, That the fees of said examiner, including his expenses for stenography and typewriting, be, and they are hereby, fixed as follows:

For taking said testimony and transcribing the same for filing in this court, not to exceed the sum fixed by the rules of this court.

Geo. Gray, *C. J.*

Jan'y. 27, 1914.

*1 In the District Court of the United States, Eastern District of Pennsylvania.

September sessions, 1913.

THE UNITED STATES OF AMERICA, PETITIONER,
v.
READING COMPANY, PHILADELPHIA & READING RAILway Company, The Philadelphia & Reading Coal & Iron Company, The Central Railroad Company of New Jersey, The Lehigh & Wilkes-Barre Coal Company, The Lehigh Coal & Navigation Company, Wilmington & Northern Railroad Company, Lehigh & Hudson River Railway Company, Lehigh & New England Railroad Company, George F. Baer, George F. Baker, Edward T. Stotesbury, Henry C. Frick, Peter A. B. Widener, Henry A. DuPont, Daniel Willard, Henry P. McKean, and Samuel Dickson, defendants.

In equity, No. 1095.

Met pursuant to notice at No. 2 Rector Street, New York City, Monday, February 9, 1914, at 11 o'clock a. m.

Present: The examiner; Frederic R. Coudert and Howard Thayer Kingsbury, special assistants to the Attorney General, for the Government; Charles Heebner, Esq., for the Reading Company, Philadelphia and Reading Railway Co., Philadelphia & Reading Coal & Iron Company, The Wilmington & Northern Railway Co., and George F. Baer, George F. Baker, Edward T. Stotesbury, Henry C. Frick, Peter A. B. Widener, Henry A. DuPont, Daniel Willard, Henry P. McKean, and Samuel Dickson; Jackson E. Reynolds, Esq., and Robert W. DeForest, Esq., for Reading Company, Philadelphia & Reading Railway Co., Philadelphia & Reading Coal & Iron Co., Central Railroad Co. of New Jersey, and Lehigh & Wilkes-Barre Coal Company; H. S. Drinker, jr., Esq., for Lehigh Coal and Navigation Co.; William J. Turner, Esq., for Lehigh and New England Railroad Company.

2 M. ELVIN THOMPSON, having been duly sworn, was examined as follows:

By Mr. KINGSBURY:

Q. What is your occupation?

A. Topographical draughtsman.

Q. You are associated with what firm?

A. C. S. Hammond and Company. Their factory is 22 Thames Street, New York City, and their business office is 30 Church Street, New York City.

* Marginal figures refer to pages in stenographer's minutes.

Q. Have you recently prepared a map showing parts of the States of New Jersey, Pennsylvania, and New York?

A. Yes, sir.

Q. In what manner did you prepare this map and from what source?

A. It was mainly taken from geological survey charts, also from United States post-route maps from the Postal Department.

Q. From any other sources?

A. It was mainly taken from those sources.

Q. Will you please produce the map?

A. Yes, sir.

(Map produced by witness.)

Q. Explain what you have shown in respect to the railroads upon this map and how they are designated?

A. The railroad of the Central Railroad of New Jersey is shown 3
in a real heavy blue, the Lehigh and Hudson River Railroad is shown in green, the Lehigh and New England Railroad is shown in yellow color. The Lehigh and Susquehanna, shown as a subsidiary of the Central Railroad of New Jersey, is shown in a real light blue; the Panther Creek, also controlled by the Central Railroad of New Jersey, is shown in real light blue. The Philadelphia and Reading Railway is shown in a deep red; the Wilmington and Northern Railroad is shown in light red. This company is also operated by the Philadelphia and Reading Railway.

Cross-examination by Mr. REYNOLDS:

Q. What is your authority for marking the line running directly between Mauch Chunk and Lansford dark blue, as owned by the Central Railroad of New Jersey?

A. According to the information I have compiled it from. The Geological Survey sheet showed that road is owned and operated by the Central Railroad of New Jersey.

Q. That is your only authority?

A. Yes, sir. That is the only authority I have for all of this, from the United States Geological Survey.

Q. You have no personal knowledge of the nature of that railroad?

A. No; I have never been in that territory in my life.

Q. And the whole information is hearsay as to that?

A. Yes, sir. 4

Q. In reading your legends you stated that the Panther Creek was a subsidiary of the Jersey Central. You have a Panther Creek marked as running from Hauto to Tamaqua?

A. From information that I received, it runs from Lansford to Tamaqua overland, and from Lansford to Hauto it goes through a tunnel, to the best of my knowledge.

Q. What is your authority for stating that the railroad of the Panther Creek is a subsidiary of the Jersey Central?

A. The way I received the information is from Poor's Railroad Manual.

Q. And that also is entirely hearsay?

A. Yes, sir.

Q. From your knowledge of the contour maps, which you say you used in compiling this map, can you state where geographically the line colored in dark blue on this map, starting at Mocanaqua, on the Susquehanna River, and running across the main line of the Jersey Central, makes its connection with main line of the Central Railroad of New Jersey?

A. I could not tell you offhand.

Q. That part of the road which I have just described is marked in dark blue, which, according to the legend, is the Central Railroad of New Jersey proper and not a subsidiary?

A. Yes, sir.

Q. What is the source of information upon which you made that predicate?

5 A. Poor's Railroad Manual of the United States.

Q. And that also was from hearsay?

A. Yes, sir.

Q. What was your authority for coloring the three anthracite coal regions and delimiting them as you have?

A. That was taken from a State atlas of a firm by the name of Bean, in New York City, and also compiled from information received from the Geological Survey Department, which shows in all States all locations of all kinds of cannel, soft, and hard coal, clay, and other deposits found in each State in the Union.

Q. Then that information is also hearsay?

A. Yes, sir. I have no personal knowledge of that country at all.

Q. And you have no knowledge of the real accuracy of your coloring the southern field running easterly from Tamaqua to the Lehigh River as the Schuylkill region?

A. No, sir; nothing except the Geological Survey sheets, which are marked by a man from the Geological Survey Department, and are supposed to be correct and up to date in all respects. They are changed annually.

Q. That, according to your recollection, throws the Schuylkill region into that territory lying between Tamaqua and the Lehigh River?

A. Yes, sir.

6 By Mr. COUDERT:

Q. You followed the Geological Survey in making that?

A. Yes, sir.

Q. That is the best authority in this country?

A. Yes, sir.

Q. You know that as a map expert?

A. Yes, sir; I know it personally, because there are a thousand and one copies of maps in the country which are not from practical knowledge, but the survey maps are supposed to be the most correct that you can find in the country.

By Mr. KINGSBURY:

Q. This is a compiled map? It does not purport to have been made from original surveys?

A. No, sir; this is compiled from the Geological Survey sheets.

By Mr. TURNER:

Q. What is your authority for showing that the Lehigh and New England Railroad is extended from Slatington to Tamaqua?

A. From the latest information on the Geological Survey sheet, which shows that it has been a lately built road.

Q. From Slatington?

A. Yes, sir.

Q. Are you sure it is not from another point east of Slatington, and that the extension crosses the Lehigh River at Lehigh Gap?

A. We never show any connection between rivers in that respect, 7 because the way of showing it is in our dots, and they are close together.

Q. Do not the maps from which you gathered this information show that the Lehigh and New England Railroad is extended from a point between Danielsville across the Lehigh River at Lehigh Gap rather than at Slatington?

A. I can't tell you that right offhand. This was taken from the United States post-route maps.

Q. Have you the maps with you?

A. No, sir.

Mr. TURNER. The Tamaqua extension of the Lehigh and New England Railroad is constructed from a point near Danielsville in Northampton County across Northampton and Carbon Counties, crossing the Lehigh River at Lehigh Gap to Tamaqua. The Lehigh and New England Railroad now owns and operates the system of railroads formerly called the Panther Creek Railroad, which is shown here in blue and said to be a part of the Jersey Central system.

(Map produced and identified by the witness offered in evidence by Government counsel and marked "**Exhibit No. 1.**")

Government counsel offered in evidence copy of the mandate of the Supreme Court of the United States in the case of the *United States* v. *Reading Company and others*, dated December 16, 1912, and including the supplemental mandate, dated April 23, 1913 (marked "**Exhibit No. 2.**")

Exhibit No. 2 is as follows:

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the Judges of the District Court of the United States for the [Seal.] *Eastern District of Pennsylvania, greeting:*

Whereas lately in the Circuit Court of the United States for the Eastern District of Pennsylavnia, in a cause between the United States of America, petitioner, and the Reading Company, the Philadelphia & Reading Railway Company, the Central Railroad Company of New Jersey, the Delaware, Lackawanna & Western Railroad Company, the Lehigh Valley Railroad Company, the Erie Railroad Company, the New York, Susquehanna & Western Railroad Company, the Mount Lookout Coal Company, the Lackawanna Coal Company, Limited, the Temple Iron Company et al., defendants, wherein the decree of the said Circuit Court, entered in said cause on the 20th day of December, A. D. 1910, is in the following words, viz:

"This cause having come to a final hearing upon pleadings and proofs, and having been argued by the counsel of the respective parties on the 21st, 22nd, 23rd, and 24th days of February, 1910, in this court, before the three circuit judges of the Third Judicial Circuit, under the provisions of the act of Congress known as the 'expe-
9 diting act' of February 11, 1903, and the said pleadings, proofs, and arguments having been duly considered by the said judges and their written opinions having been duly filed, it is now, on this 20th day of December, 1910, by the said Circuit Court, ordered, adjudged, and decreed:

"First. That the defendants, Reading Company, Philadelphia and Reading Railway Company, the Central Railroad Company of New Jersey, the Delaware, Lackawanna & Western Railroad Company, Lehigh Valley Railroad Company, Erie Railroad Company, and the New York, Susquehanna & Western Railroad Company, prior to the time the petition was filed, entered into, and at the time and since the filing of the said petition were and have been joined together in a combination in restraint of trade and commerce among the several States by and through the instrumentality of the defendant the Temple Iron Company in violation of the act of Congress approved July 2, 1890, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies;' that the shares of the capital stock of the Temple Iron Company, claimed to be owned and held by or in the interest of each of the above-named defendants, were acquired and are now held by it or in its interest in pursuance and furtherance of such unlawful combination; and that the shares of the capital stock of the Northwest Coal Company, Edgerton Coal Company,
10 Sterrick Creek Coal Company, Babylon Coal Company, Mount Lookout Coal Company, Forty Fort Coal Company, and Lackawanna Coal Company, Limited, likewise were acquired and are now held in violation of said act of Congress by the defendant, the Temple Iron Company.

"Wherefore the above-named detendants, their officers, agents, servants, and employees, are enjoined and prohibited from continuing the combination hereby adjudged to be illegal and from hereafter entering into any like combination in restraint of trade and commerce

among the several States in anthracite coal in violation of said act of Congress.

"And each and all of the above-named defendants, their officers, directors, agents, servants, and employees, are hereby restrained and enjoined from hereafter acquiring any shares of the Temple Iron Company, from voting or attempting to vote any of such shares at any meeting of stockholders of said the Temple Iron Company, from collecting or receiving any dividends or other profits thereon, and from exercising or attempting to exercise any control, direction, supervision, or influence whatsoever over the acts of said corporation. And it is further ordered, adjudged, and decreed that the Temple Iron Company be, and it is hereby, restrained and enjoined from permitting shares held by any of said defendants, or any company controlled by any of them, to be voted at any corporate meeting of the said the Temple Iron Company, from paying to any of them any dividends on account of such shares, and from permitting or suffering any of them to exercise any control over its affairs. 11

"And the defendant, the Temple Iron Company, its officers, agents, or representatives, are hereby further enjoined from exercising any control over any of the property or assets of the Northwest Coal Company, Edgerton Coal Company, Sterrick Creek Coal Company, Babylon Coal Company, Mount Lookout Coal Company, Forty Fort Coal Company, and Lackawanna Coal Company, Limited, from voting the shares of capital stock of such companies, and from receiving any dividends or other profits accruing thereon.

"*Provided*, That nothing herein contained shall be taken as preventing the said defendant, the Temple Iron Company, from selling and disposing of the shares of the capital stocks, assets, and properties of the Northwest Coal Company, Edgerton Coal Company, Sterrick Creek Coal Company, Babylon Coal Company, Mount Lookout Coal Company, Forty Fort Coal Company, and Lackawanna Coal Company, Limited, acquired by it as hereinbefore stated and found to have been acquired by it in violation of the said act of Congress, to any bona fide purchaser or purchasers not in privity with any of the defendants herein and not sustaining any relation in interest direct or indirect, by trust or otherwise, to or with any of said defendants, and distributing the remainder, if any, of the proceeds thereof after the payment of its bonded and other indebtedness, among the holders of the capital stock of the said defendant, the said The Temple Iron Company. 12

"Second. That the charge made in paragraph seven (*b*) of the petition, concerning the combination by which it is alleged the Erie Railroad Company acquired the capital stock of the New York, Susquehanna & Western Railroad Company, in violation of the act entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' approved July 2, 1890, is not sustained, and the petition in respect of that charge is dismissed.

"Third. That the charge made in paragraph seven (*c*) of the petition concerning the combination by which it is alleged the Reading Company acquired a majority of the capital stock of the Central Railroad Company of New Jersey in violation of the act entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' approved July 2, 1890, is not sustained, and the petition in respect of that charge is dismissed.

"Fourth. That the general charge in paragraph seven of the petition concerning an alleged combination or conspiracy in violation of the act entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' approved July 2, 1890, in the development of which it is averred the other combination set forth in said petition were used as steps, is not sustained, and the petition in respect of that general charge is dismissed.

"Fifth. That the charge in paragraph seven (*a*) of the petition concerning an alleged combination for making and maintaining the so-called 65 per cent contracts is not sustained, and the petition in
13 respect of that charge is dismissed.

"Sixth. That the petitioner do recover from Reading Company, Philadelphia & Reading Railway Company, the Central Railroad Company of New Jersey, the Delaware, Lackawanna & Western Railroad Company, Lehigh Valley Railroad Company, Erie Railroad Company, the New York, Susquehanna & Western Railroad Company, and the Temple Iron Company, defendants herein, its taxable costs as to so much of the proceedings as relate to the subject matter of the first paragraph of this decree, and shall have execution therefor.

"Seventh. That except as to defendants Reading Company, Philadelphia and Reading Railway Company, the Central Railroad Company of New Jersey, the Delaware, Lackawanna & Western Railroad Company, Lehigh Valley Railroad Company, Erie Railroad Company, the New York, Susquehanna & Western Railroad Company, the Temple Iron Company, Mount Lookout Coal Company, and Lackawanna Coal Company, Limited, in the particulars hereinbefore specified, the petition is dismissed.

"December 20, 1910.

"GEO. GRAY,
"JOS. BUFFINGTON,
"W. M. LANNING,
"*United States Circuit Judges, Third Circuit.*"

14 as by the inspection of the transcript of the record of the said Circuit Court, which was brought into the Supreme Court of the United States by virtue of an appeal taken by the United States, an appeal taken by the Temple Iron Company, and an appeal taken by the Reading Company, the Philadelphia & Reading Railway Company, the Central Railroad Company of New Jersey, the Delaware, Lackawanna & Western Railroad Company, the Lehigh Valley Railroad Company, the Erie Railroad Company, the New York, Susquehanna & Western Railroad Company, the Mount Lookout Coal Company, and the Lackawanna Coal Company, Limited, agreeably to the act of Congress, in such case made and provided, fully and at large appears.

And whereas, in the present term of October, in the year of our Lord one thousand nine hundred and twelve, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, on separate appeals, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of the said Circuit Court in this cause declining to enjoin the minor combinations be and the same is hereby, affirmed.

And it is further ordered, that this cause be, and the same is hereby, remanded to the District Court of the United States for the Eastern

District of Pennsylvania, with directions to dismiss the petition, without prejudice, in so far as it seeks relief against the said three alleged minor combinations. 15

It is further ordered, adjudged, and decreed that the decree of the said Circuit Court as to the Temple Iron Company combination be, and the same is hereby, affirmed.

It is further ordered, adjudged and decreed that the decree of the said Circuit Court as to the sixty-five per cent contracts be, and the same is hereby, reversed; and that this cause be, and the same is hereby, remanded to the said district court with directions to enter a decree cancelling each of these contracts, and perpetually enjoining their further execution, and for such proceedings as are in conformity with the opinion of this court. December 16, 1912.

And afterwards, to wit, on April 7th, A. D. 1913, the following order was entered in said cause, viz:

"This cause came on again to be heard upon five several petitions filed by the Pennsylvania Coal Company, the Elk Hill Coal & Iron Company, the New York, Susquehanna and Western Coal Company, Hillside Coal & Iron Company, and the Delaware, Lackawanna & Western Railroad Company, parties to the cause as alleged holders of sixty-five per cent coal contracts, praying that the direction in the opinion heretofore filed that the cause should be remanded with direction to enter a decree cancelling each and every of the sixty-five per cent contracts referred to in the pleadings held by any of the parties to the cause, and for a modification of the mandate so as to exclude 16 from cancellation the five several contracts described and referred to in the said five separate petitions.

"And it appearing that the United States, by its Attorney General, has answered the several petitions, and that in respect to that of the Pennsylvania Coal Company assents to the petition and consents that such modification be made as to dismiss the bill in so far as it is thereby sought to cancel the contract between the Pennsylvania Coal Company and the Elk Hill Coal & Iron Company of March 1, 1902, referred to in the petition of the Pennsylvania Coal Company, upon the concession that the agreement 'is substantially different from the series of agreements known as the sixty-five per cent contracts adjudged unlawful by this court,' it is accordingly so entered.

"As to the application of the four other petitioners named above for like relief, the United States denies and contests the right of each, contending that in substance and principle the facts in respect of each of the contracts in respect of which relief is sought are not similar to the contract between the Pennsylvania Coal Company and the Elk Hill Coal & Iron Company, but fall within the general series of the sixty-five per cent contracts condemned by the judgment of this court. 17

"Upon this issue the transcript is confusing and the briefs inadequate. The court therefore deems it wise in the exercise of its judgment to decline any determination of the question upon the present record. It is therefore ordered that the mandate of this court, be so modified as to exclude from the direction to cancel the sixty-five per cent contracts referred to in the pleadings the said contracts mentioned in the four petitions, namely, that of the Elk Hill Coal & Iron Company, the New York, Susquehanna & Western Coal Co.,

Hillside Coal & Iron Company, and the Delaware, Lackawanna & Western Railroad Company, and that the cause, so far as concerns the contracts of the said petitioners, be remanded to the district court with direction to hear and determine the merits as presented by said petitioners, and make such decree as law and justice require."

You, therefore, are hereby commanded that such further proceedings be had in said cause, in conformity with the opinion and decree of this court as according to right and justice and the laws of the United States, ought to be had, the said appeals notwithstanding.

Witness the honorable Edward D. White, Chief Justice of the United States, the 23d day of April, in the year of our Lord one thousand nine hundred and thirteen.

JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

18 Endorsed: Supreme Court of the United States Nos. 198, 206, & 217, October term, 1912. The *United States* v. *The Reading Company et al.; The Temple Iron Company* v. *The United States; The Reading Company et al* v. *The United States.* Mandate filed May 26, 1913, Wm. W. Craig, Clerk. B.

Government's counsel also offered in evidence copy of the decree of the District Court of the United States for the Eastern District of Pennsylvania in the case of the *United States* v. *Reading Company and others*, entered upon the mandate of the Supreme Court, and dated May 26, 1913.

19 Copy of decree marked "Exhibit No. 3."

Exhibit No. 3 is as follows:

In the District Court of the United States, Eastern District of Pennsylvania.

THE UNITED STATES OF AMERICA, PLAINTIFF,
v.
READING COMPANY AND OTHERS, DEFENDANTS. } In Equity, No. 1095.

DECREE.

This cause having come on for hearing before this court and having been determined by a decree, entered December 20, 1910, from which the plaintiff and certain of the defendants appealed to the Supreme Court of the United States, which has in part modified and reversed the decree of this court and issued its mandate filed herein May 26, 1913, remanding the cause and containing directions as to the decree to be entered by this court;

Now, therefore, upon consideration, it is ordered, adjudged, and decreed as follows:

SEC. 1. That the aforesaid decree of this court, entered December 20, 1910, is set aside in so far as it failed to sustain the charge of the petition in respect of the so-called 65 per cent contracts and dismissed the petition as to that charge and as to any defendants who were or are parties to such contracts, with the exceptions hereinafter

20 expressly stated.

SEC. 2. That the so-called 65 per cent contracts made by the defendants, the Philadelphia & Reading Coal & Iron Company, the Lehigh & Wilkes-Barre Coal Company, the Lehigh Valley Coal Company, the Delaware, Lackawanna & Western Railroad Company, Hillside Coal & Iron Company, the Pennsylvania Coal Company, and the New York, Susquehanna & Western Coal Company, severally, with other named producers before the court, for the purchase of anthracite coal mined or owned by the latter, as set forth in the pleadings and evidence, excepting a contract dated March 1, 1902, between the Pennsylvania Coal Company and Elk Hill Coal & Iron Company; a contract dated November 1, 1900, between the New York, Susquehanna & Western Coal Company and John Jermyn and Joseph J. Jermyn; a contract dated October 21, 1903, between Hillside Coal & Iron Company and Lackawanna Coal Company, Limited; a contract dated October 26, 1899, between the Delaware, Lackawanna & Western Railroad Company and Peoples' Coal Company; and a contract dated May 1, 1907, between the Delaware, Lackawanna & Western Railroad Company and George F. Lee Coal Company, from the times they were entered into have restrained and monopolized trade and commerce among the States in violation of the act entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890.

Wherefore, said contracts, with the exceptions stated, are hereby cancelled, and the defendants who are or were parties thereto, their 21
officers, directors, or other agents or assigns, are hereby perpetually enjoined and prohibited from further executing them directly or indirectly.

SEC. 3. That paragraph "second" of the aforesaid decree entered December 20, 1910, disposing of the charge of the petition in relation to the acquisition by Erie Railroad Company of the capital stock of the New York, Susquehanna & Western Railroad Company, is hereby modified so as to read as follows:

"That in respect of the charge based on the alleged acquisition and holding by Erie Railroad Company of a majority of the capital stock of the New York, Susquehanna & Western Railroad Company, the petition is dismissed, but without prejudice to the right of the United States to institute any other suit or proceeding under the aforesaid act of July 2, 1890, or under any other authority, based in whole or in part on the same facts."

SEC. 4. That paragraph "third" of said decree, entered December 20, 1910, disposing of the charge of the petition in relation to the acquisition by Reading Company of a majority of the capital stock of the Central Railroad Company of New Jersey, is hereby modified 22
so as to read as follows:

"That in respect of the charge based on the alleged acquisition and holding by Reading Company of a majority of the capital stock of the Central Railroad Company of New Jersey the petition is dismissed, but without prejudice to the right of the United States to institute any other suit or proceeding under the aforesaid act of July 2, 1890, or under any other authority, based in whole or in part on the same facts."

SEC. 5. That in respect to the charge based on the alleged acquisition and holding by Erie Railroad Company of the capital stocks of the Pennsylvania Coal Company, Erie & Wyoming Valley Rail-

road Company, and Delaware Valley & Kingston Railroad Company the petition is dismissed, but without prejudice to the right of the United States to institute any other suit or proceeding under the aforesaid act of July 2, 1890, or under any other authority, based in whole or in part on the same facts.

SEC. 6. That the petition is dismissed as to the contract dated March 1, 1902, between Elk Hill Coal & Iron Company and the Pennsylvania Coal Company (R., I., p. 163), among other things providing for the sale of coal by the former to the latter, but without prejudice to the right of the United States to challenge the legality of said contract in any other suit or proceeding.

SEC. 7. That paragraph "sixth" of the aforesaid decree entered December 20, 1910, relating to costs be modified so as to read as follows:

"That plaintiff recover from the defendants, Reading Company,
23 Philadelphia & Reading Railway Company, the Central Railroad Company of New Jersey, the Delaware, Lackawanna & Western Railroad Company, Lehigh Valley Railroad Company, Erie Railroad Company, the New York, Susquehanna & Western Railroad Company, the Temple Iron Company, the Philadelphia & Reading Coal & Iron Company, the Lehigh & Wilkes-Barre Coal Company, the Lehigh Valley Coal Company and Hillside Coal and Iron Company its taxable costs in this court as to so much of the proceedings as relate to the subject matter of the first paragraph of this decree and to the charge in paragraph seven (*a*) of the petition concerning the combination for making and maintaining the so-called sixty-five per cent contracts, and shall be entitled to have execution therefor."

SEC. 8. That jurisdiction of this cause is retained by this court for the purpose of hearing the parties and determining whether under the principles declared by the Supreme Court in its opinion herein four certain contracts set forth in the pleadings and evidence, namely, a contract dated November 1, 1900, between the New York, Susquehanna & Western Coal Company, John Jermyn and Joseph J. Jermyn, a contract dated October 21, 1903, between Hillside Coal & Iron Company and Lackawanna Coal Company, Limited; and a contract dated October 26, 1899, between the Delaware, Lackawanna & Western Railroad Company and Peoples' Coal Company; and a contract dated May 1, 1907, between the Delaware, Lackawanna & Western Railroad Company and George F. Lee Coal Company should
24 be cancelled; and for the purpose of making such further orders and decrees, if any, as may become necessary for carrying out the mandate of the Supreme Court.

May 26, 1913.

GEO. GRAY,
JOS. BUFFINGTON,
JOHN B. MCPHERSON,
United States Circuit Judges.

Mr. KINGSBURY. I suggest that the opinion of the Supreme Court in the case reported under the title of *United States* v. *Reading Company*, 226 United States Reports, beginning at page 324, be deemed in evidence, in view of the reference to it in the mandate, with liberty

to any party to refer to any portion of the opinion without transcribing the same in full in the record in this case.

I also offer in evidence from the printed record the plan and agreement for the reorganization of the Philadelphia and Reading Railroad Company and Philadelphia and Reading Coal and Iron Company, dated December 14, 1895; the statement rendered by the Reading Company to the committee on stock list, New York Stock Exchange, dated March 24, 1897, with the schedules thereto annexed; and the opinion of the attorney general of Pennsylvania, 25
dated January 2, 1897, contained in the same pamphlet.

It is stipulated that this exhibit need not be transcribed in the minutes, and that either or any party may put into the printed record such extracts therefrom as they desire.

Pamphlet marked "Exhibit No. 4."

Counsel for the Government reads in evidence from the printed 26
record in the Supreme Court of the United States of the United States *v.* Reading Company and others the following portions from the testimony:

All testimony of W. A. Lathrop contained in volume 2, on pages 44, 45, and 46, and the following extracts on pages 47, 52, 73, and 74.

Mr. REYNOLDS. As counsel for the defendants I represent, I interpose no objection on the ground that the record is not a verity and is not sufficiently proved. I do reserve the right to meet the excerpts offered by the Government by other excerpts offered by the defendants, or to call the same witnesses in contradiction of the testimony offered by the Government.

It is understood that this statement and reservation applies to all of the defendants.

In addition, counsel for the Lehigh Coal and Navigation Company reserve the right to object to the testimony of Mr. Lathrop in so far as it affects the Lehigh Coal and Navigation Company on the ground that the Lehigh Coal and Navigation Company was not a party to the former proceeding, and Mr. Lathrop being dead.

W. A. LATHROP, a witness for the plaintiff, having been duly sworn, 27
was examined as follows:

Direct examination by Mr. McREYNOLDS:

Q. Please state your age, residence, and occupation.

A. My age is 54; I am president of the Lehigh Coal and Navigation Company; my home is in Wilkes-Barre, Pa.

Q. How long have you been president of the Lehigh Coal and Navigation Company?

A. Since March, 1907.

Q. Who was your predecessor?

A. Lewis A. Riley.

Q. Is he living?

A. Yes, sir.

Q. Where is he?

A. He lives in Philadelphia.

Q. How were you associated with the company before you became its president?

A. I was not associated with it.

Q. What had been your occupation before that time?

A. For some five or six years before that I was president of the Pennsylvania Coal and Coke Company, a bituminous company.

Q. Had you never been connected with the anthracite coal business
28 prior to your going to the Lehigh Coal and Navigation Company?

A. Yes, sir. Between 1889 and 1901 I was general superintendent of the Lehigh Valley Coal Company—had charge of its mines.

Q. Is the Lehigh Coal and Navigation Company a Pennsylvania corporation?

A. Yes, sir.

Q. Organized under the general or a special act?

A. Under a special act.

Q. How many collieries has it?

A. Ten.

Q. Where are they located?

A. Located in the southern coal field, in Carbon and Schuylkill Counties.

Q. About what has been its production of coal during the last three years?

A. It produced last year, in round figures, three millions of tons, and the two or three years before that, my recollection is, about two and a quarter millions of tons.

Q. What system of railroad serves these collieries?

A. The New Jersey Central and the Philadelphia and Reading.

Q. Do both of these railroads reach the same collieries in any instance?

A. No. The Lehigh Coal and Navigation Company owns the Pan-
29 ther Creek Road and delivers to both of these roads.

Q. Where does the Panther Creek road connect with the New Jersey Central?

A. At Hauto.

Q. Where does it connect with the Philadelphia and Reading?

A. At Tamaqua.

Q. Does the Panther Creek road serve all the collieries of your company?

A. All that are operated by the company; yes.

Q. How do you distribute your trade between the two roads, the New Jersey Central and the Philadelphia and Reading?

A. We distribute it in accordance with our ability to sell the coal in these different markets.

Q. Do you sell coal in New York?

A. Yes, sir.

Q. How do you distribute that tonnage between these two roads?

A. That all goes by the New Jersey Central.

Q. Why?

A. The shortest and most direct route. It is bound to that road by agreement of lease with the Lehigh and Susquehanna, which also belongs to the Lehigh Coal and Navigation Company.

Q. You are bound up to the New Jersey Central during that lease?

A. Yes, sir.

Q. What is the nature of the lease?

A. You asked me to bring the lease. Here is a copy of it. 30

(Witness produced copy of agreement between the Lehigh Coal and Navigation Company and the Central Railroad Company of New Jersey, dated June 28, 1887.)

Q. Give us your understanding of this.

A. The coal destined for markets on that road is bound for shipment on that line.

* * * * * * *

Q. The Lehigh Coal and Navigation Company owns the Lehigh and Susquehanna Railroad Company, does it?

A. Yes, sir.

Q. Some years ago that road was leased to the New Jersey Central Railroad Company, was it not?

A. Yes, sir.

* * * * * * *

Q. What does the Lehigh Coal and Navigation Company get as the lessor in this lease to the New Jersey Central?

A. It gets a cash rental named in the lease.

Q. Are the rates of freight from your collieries over the Philadelphia and Reading Railway Company and the New Jersey Central Railroad Company to tidewater at New York Harbor the same? 31

A. We have no rates by the Reading to tidewater at New York Harbor.

Q. They do not quote you rates at all?

A. No, sir; we do not go that way. It would be a roundabout way.

Q. There is nothing to hinder you going that way if you wanted to, is there?

A. No; except the fact that there is no reason why we should.

Q. If they should give you a less rate than the New Jersey Central you would go there very quick, would you not?

A. I think we would; yes, sir.

Q. It is entirely possible to send all the freight from your collieries to the New York Harbor over the Philadelphia and Reading Railroad, is it not?

A. Yes, sir; there is no physical reason why it should not be done.

Q. You would do it if you got a rate that was inducive to that end?

A. I think so, if there was nothing in the lease to prevent it.

Q. What proportion of the output of the Lehigh Coal and Navigation Company is sent to tidewater at New York?

A. I can not answer that. This is a round figure. I do not recall it, but I should say a little more than half of it.

* * * * * * *

Q. You stated about half of your output came to New York
32 Harbor?

A. I think a little more than half; yes, sir.

Q. Speaking generally, where does the rest of your output go?

A. It is shipped to various points along the lines between the mines and tide, and some of it goes to New England by rail, and some goes over the Lehigh and Hudson, and some of it goes to Philadelphia, and some of it goes to points on the canal. We own a canal in connection with this property.

* * * * * * *

Q. Who is your principal competitor in the New York market?

A. I do not know that there is any principal competitor. We are competitors of every other of the large interests who ship coal here.

Q. Give us some of them.

A. The Lehigh and Wilkes-Barre Coal Company, the Philadelphia and Reading Coal and Iron Company, the Delaware, Lackawanna and Western Railroad Company, the Lehigh Valley Railroad Company, the Ontario and Western Railroad Company, and the Erie. Those are among the principal ones.

* * * * * * *

Q. Your company owns and operates all the collieries in the southern coal field lying between the Lehigh River on the east and Tamaqua on the west?

A That is right.

Q. What railroad property in that section is owned and operated
33 by the Lehigh Coal and Navigation Company?

A. The Panther Creek road.

Q. With what railroad system does this Panther Creek Railroad, operated by your company, connect, and at what points?

A. It connects at Tamaqua with the Philadelphia and Reading, and at Hauto with part of the Jersey Central system.

Q. Are all of your collieries reached by this Panther Creek Railroad?

A. All but one.

Q. Which one?

A. No. 307. That is directly on the Nesquehoning Valley Railroad, which is in the Jersey Central system.

Q. Does your company own substantially all the coal lands lying in the coal region west of the Lehigh River and east of Tamaqua?

A. Yes.

Q. As I understood you when on the stand before, your company ships a good deal of coal by way of Tamaqua and then over the Philadelphia and Reading to Philadelphia and other points along the system?

A. Yes; the points reached by that road.

Q. The Philadelphia and Reading Railroad reaches collieries lying in the southern coal field to the west of Tamaqua, does it not?

A. Yes.

Q. In transporting coal from these collieries does it come up to 34
Tamaqua and then go south over the line of the Philadelphia and Reading?

A. The coal from these collieries? I do not know whether all our coal goes to Tamaqua and from there to delivery points on the Reading System.

Q. Your coal bound to Philadelphia goes over what line?

A. Going by way of Tamaqua?

Q. Yes.

A. I do not know that I can tell you. The Reading Company handles it as best suits them. It goes over their system.

Q. It goes first to Tamaqua?

A. Yes.

Q. And there it is delivered to the Reading System?

A. They handle it.

Q. They handle it by way of Reading, and from there to Philadelphia?

A. I suppose so. I do not know how they handle it.

By Mr. SCHAPERKOTTER:

Q. You do not know?

A. No; I have no concern in knowing, as long as it gets to desti- 35
nation.

By Mr. MCREYNOLDS:

Q. Is there a joint rate between the Philadelphia and Reading and the Panther Creek road for coal going to Philadelphia from your colliery?

A. No.

Q. The rate over the Reading then begins at Tamaqua?

A. At Tamaqua.

Q. Is there a joint rate between the Panther Creek road and the Central of New Jersey for coals moving from your colliery to points along the New Jersey Central line?

A. No; we deliver it at Hauto.

Q. And there the rate begins?

A. There the rate begins.

Subject to the same arrangement, counsel for the Government reads from the same source testimony of William H. Richmond, contained in volume 2, at pages 264, 265, and 266, as follows:

WILLIAM H. RICHMOND, a witness for the plaintiff, having been duly sworn, was examined as follows:

Direct examination by Mr. TODD:

Q. Will you give your present address and occupation?

36 A. My residence is Scranton, 2425 North Main Avenue.

Q. And your occupation? You are a retired anthracite operator?

A. A retired coal operator.

* * * * * * *

By Mr. TODD:

Q. Without going into further detail, can you name as of, say 1880, the railroads which were then serving the anthracite fields?

A. The Delaware, Lackawanna and Western, and the Erie Railroad, through the Pennsylvania Coal Company, served the Lackawanna field at that time.

* * * * * * *

Q. When I asked you what railroads were serving the anthracite fields in 1880, I did not mean the northern field exclusively, but all of them, so far as you have information respecting them.

A. The Lehigh Valley was doing so and the New Jersey Central; the Reading Railroad, I think. I do not recall now any others particularly.

Also the testimony of Charles E. Henderson, volume 4, pages 542, 543, 598, and 600, as follows:

CHARLES E. HENDERSON, having been duly sworn, was examined as follows:

By Judge CAMPBELL:

Q. Where do you at present reside?

37 A. Talbot County, Maryland.

Q. You are now retired from active business and are simply a plain farmer?

A. Yes, sir.

Q. Not in too much detail, kindly give us a general idea of your railroad experience connected with the subject of conducting transportation, accounting, and traffic, prior to your being connected with the Philadelphia and Reading Coal and Iron Company?

A. My first experience in railroad business was clerk at the station at Fort Scott, Kansas, on the Missouri River, Fort Scott and Gulf Railroad, in 1870. Next after that I was chief clerk to the general freight and passenger agent of the same road. Next after that I was chief clerk for the general superintendent of the same road. This general superintendent was also superintendent of the Leavenworth, Lawrence and Galveston Railroad, at Kansas City, Missouri. During the time I was chief clerk I was in charge of the accounting department of the Leavenworth, Lawrence and Galveston Railroad. When I left there I was prospecting routes for the line that is now the Kansas City and Memphis Railroad, part of the Rock Island road. Next after that I was general freight and passenger agent of the Atchison and Nebraska Railroad. After that I was auditor and cashier of the Indiana, Bloomington and Western Railroad, at Indianapolis, Indiana. After that I was assistant general manager of the same road, in charge of its whole business, the president being 38
located in New York. For eleven years I was general manager of the same. Intervening between the time I was general manager of that road, I was receiver of the same road. I was incidentally, however, at the same time manager of both roads. I was general manager of the Ohio Southern Railway for twelve years. On reorganization after the receivership of the Indiana, Bloomington and Western Railroad, I was general manager of the reorganized company, the Ohio, Indiana and Western. That covers my railroad career up to the time that I came east as general manager of the Philadelphia and Reading Coal and Iron Company in December, 1889.

Q. So that from 1870 down to date you have been continuously in the railroad service and during that period covering all its branches?

A. Yes, sir.

Q. Of what departments of the business of the Philadelphia and Reading Coal and Iron Company were you placed in charge when you came here in December, 1889?

A. I was in charge of its mining operations and of its sales.

* * * * * * *

Cross-examination:

Q. So that we may understand the situation, let us suppose that the Lehigh Valley Railroad reduced its freight charges to New York Harbor from the anthracite coal mines to a dollar and a quarter. 39
Would it be necessary for the Philadelphia and Reading to reduce its?

A. I would think that it ought to do so, in justice to the operators on the line of its road.

Q. If it did not do so, what would be the effect on the Philadelphia and Reading road?

A. I think that the operator would suffer a loss and perhaps his colliery would cease to do business and the Reading Railroad would finally lose his traffic, as a result thereof.

Q. All these coals, in other words, were in competition at New York Harbor and the one that could sell cheapest, you think, would get the business, and the freight rate would determine who could sell the cheapest, probably; is that right?

A. The first part of that question I will answer. The one who could sell the same goods at the least price would get the greater share of the business, up to his power to produce. As to the next part of the question, I would like to hear it again.

(Question read.)

A. The tendency of the freight rate, being lower in the one case, would be to enable the person who had the benefit of the lower rate to sell it cheaper.

Q. In 1898, 1899, and 1900, what roads did you regard as competitors of the Philadelphia and Reading Railway Company for the carrying of anthracite coals from the mines to tide at New York?

40 A. I did not regard any road as a competitor of the Philadelphia and Reading Railway for the carrying of the coal on the line of the Reading Railway. I did regard all of them as competitors in the market for the sale of coal, after being carried there. These other roads had no access to the mines on the lines of the Philadelphia and Reading Railway, and it was impossible for them to carry it.

Q. You mean that they were not competitors in the sense that they could not carry the same carload of coal?

A. Yes.

Q. But they were carrying similar coals from a near-by region, were they not?

A. Yes; they were competitors in the market, but not competitors for the carriage of this particular coal that was on the line of the Reading Railway; competitors in the market in New York for the sale of coal.

Q. They were all carrying coals from the same general region to New York for sale in competition?

A. Competition of market, yes.

Q. Which roads were engaged in that?

A. All of them.

Q. Name them, please, for 1898, 1899, and 1900.

A. Delaware, Lackawanna and Western; Lehigh Valley; Central Railroad of New Jersey; Pennsylvania Railroad; the Delaware and Hudson; New York, Ontario and Western.

Also testimony of A. T. Dice, in volume 4, pages 625, 626, 645, 646, 41
651, 652, and 653:

AGNEW THOMPSON DICE, called on behalf of the Philadelph' . and Reading Railway Company, having been duly sworn, was examined as follows:

By Judge CAMPBELL:

Q. You are now the general superintendent of the Philadelphia and Reading Railway Company?

A. I am.

Q. And also of various affiliated companies which, while maintaining a separate and independent organization from the Philadelphia and Reading Railway Company, are affiliated on account of a major interest of the Reading company in their share capital, and form part of the so-called Reading System?

A. I am general superintendent of the system of the Philadelphia and Reading Railway and affiliated lines.

Q. How long have you been general superintendent?

A. Since the 1st of May, 1903.

Q. I would thank you to state to the gentlemen your previous experience in railways in a brief, general way. It is not necessary to go down into great detail.

A. I began work with the Pennsylvania Railroad in July, 1881, on an engineering corps and served in various capacities with that company until 1892. I was then a supervisor on the Pennsylvania Railroad. I left there the 1st of January, 1892, and went with the 42
New York Central, as superintendent of signals, and installed the interlocking and block system on the New York Central. left there April 1st, 1894, and was appointed superintendent of the Atlantic City Railroad, which is one of the Reading lines. On the 1st of February, 1897, I was appointed superintendent of the Shamokin division of the Philadelphia and Reading Railway, and on May 1st, 1903, I was appointed general superintendent, which position I now hold.

Q. You are entirely familiar with the whole system of the railway company and its affiliated lines, their geographical situation, and so on, I suppose?

A. I am.

* * * * * * *

Q. There is another point, as to the comparison between the anthracite rate and the bituminous rate, to which your attention has

not been called. The Philadelphia and Reading Railway System was primarily built as an anthracite road, was it not?

A. It was absolutely so.

Q. It had no other business except what has developed in the growth of business?

A. That is correct.

Q. So that primarily the capital expense and general expenses of all yards and mines, and the general maintenance of the tracks
43 themselves had to be provided for in the revenue derived from the transportation of anthracite coal?

A. That is true.

* * * * * * *

Cross-examination:

Q. To what road does the Philadelphia and Reading Railway deliver most of the anthracite coal as a connecting line which is shipped on through rates?

A. The New York Central.

Q. At what point?

A. At Newberry Junction. It is the extreme northwestern part of our system. It is in the northern central part of Pennsylvania.

Q. Where do most of the coals delivered to the New York Central at that point go?

A. That is distributed throughout New York State. It goes to Buffalo Junction, and it is there transhipped for the West, and a great deal of it is loaded in box cars at the collieries and delivered to the New York Central at Newberry Junction for distribution through the entire West and Canada.

* * * * * * *

Q. How far is it to New York Harbor from the weighing scales on the lines of the Philadelphia and Reading Railway most distant from that point, and what are the weighing scales?

A. At St. Clair and at Cressona and at Tamaqua are the scales that we weigh what we term the eastern coal. We have scales at Shamokin and at Mahanoy Plane, but we do not weigh any eastern
44 coal on those scales.

Q. Which one of those scale points, Tamaqua, St. Clair, or Cressona, is farthest from New York?

A. Tamaqua and St. Clair are nearly the same distance from New York.

Q. What is that distance?

A. You mean, of course, via the route the coal takes?

Q. Via the route you take.

A. About one hundred and sixty miles to Port Reading.

Q. How far is Cressona?

A. Cressona is about a hundred and fifty-two miles.

Q. The lines of what other systems connect with those of the Philadelphia and Reading Railway in the coal region?

A. We have at Tamaqua a connection with what are really the tracks of the Lehigh Coal and Navigation Company, but are operated by the Central Railroad of New Jersey. North of Tamaqua we have at Tamanend a connection with the Central Railroad of New Jersey, and they operate over our tracks from Tamanend to Silver Brook Junction, a distance of about five miles, and over that five miles of tracks they haul their coal that is produced in the Audenried district, in the Lehigh region. Those are the only connections we have with other lines in the coal region.

Also testimony of John F. Auch, in volume 4, pages 667, 679, 680, 45
and 681, as follows:

JOHN F. AUCH, having been duly affirmed, was examined as follows:

By Judge CAMPBELL:

Q. What is your present occupation?

A. General freight agent, Philadelphia and Reading Railway.

Q. I would like you to begin at the beginning and trace down your connection with the business of the Philadelphia and Reading Railway Company, briefly, but fully enough to cover your experience and knowledge.

A. I first entered the employ of the Philadelphia and Reading Railroad Company in 1875 in the capacity of telegraph operator, and served in that capacity until 1879. I was then appointed station agent and served in the capacity of station agent from 1879 until 1884, and in 1884 entered the general freight department, and have continued consecutively in that department up to the present time.

* * * * * * *

Cross-examination by Mr. MCREYNOLDS:

Q. Does the Philadelphia and Reading Railway Company transport bituminous coal from the Beech Creek and Clearfield districts to tidewater?

A. Yes, sir. 46

Q. At what point are such coals delivered to tide?

A. It is delivered to the Central Railroad of New Jersey at Tamanend or Hauch's Switch and transferred by the Central Railroad of New Jersey from that point to tidewater.

By Judge CAMPBELL:

Q. Do you not want to follow that up by saying that we carry coal from that district by our own road to Port Reading?

A. I do not know whether there is any bituminous coal originating on the Beech Creek that goes by our own road to Port Reading. I do not know that there is bituminous coal that goes to Port Reading coming from other sections.

Q. You do know, at all events, that there is bituminous coal from the Beech Creek that is carried on our own rails to Port Richmond in Philadelphia?

A. Yes, sir.

By Mr. McREYNOLDS:

Q. Where do those coals from the Beech Creek and Clearfield districts come on to the line of the Philadelphia and Reading?

A. At Newberry Junction.

Q. What road delivers them to you at that point?

A. New York Central.

Q. How far from Newberry Junction is it to the mines?

A. I do not know. I should say the distance varies from fifty to a
47 hundred miles.

Q. How far do you carry those coals over the lines of the Philadelphia and Reading road from Newberry Junction to Port Richmond in Philadelphia?

A. Two hundred and four miles.

Q. What is the rate on those bituminous coals from the Beech Creek and Clearfield district?

A. I do not know.

Q. It is quite possible to transport all that coal to New York Harbor over the lines of the Philadelphia and Reading Railway without turning it over to the Central Railroad of New Jersey, is it not?

A. I do not say that it is physically impossible. I think, however, that the question would be determined largely by the facilities which might be furnished at Port Reading.

Q. Do you know how far it is from the mines in the Clearfield region to New York Harbor by way of Newberry Junction, Tamanend, and thence via the tracks of the Central Railroad of New Jersey?

A. Approximately the distance from Newberry Junction to tidewater via Tamanend, in connection with the Central Railroad of New Jersey, is two hundred and forty miles. Assuming that the distance from the mines to Newberry Junction is fifty miles, we should add fifty miles to that, and if it is a hundred, add a hundred.

48 Also testimony of George F. Baer, volume 5, pages 1160, 1161, 1185 to 1187, inclusive; also page 1201 to page 1204, inclusive; also pages 1207 and 1208; also pages 1219 to 1221, inclusive, as follows:

GEORGE F. BAER, having been duly sworn, was examined as follows:

By Judge CAMPBELL:

Q. You are president of the defendants, the Reading Company, Philadelphia and Reading Railway Company. Philadelphia and Read-

ing Coal and Iron Company, the Central Railroad Company of New Jersey, the Lehigh and Wilkes-Barre Coal Company, and the Temple Iron Company?

A. I am.

Q. You are a lawyer?

A. I was, and I suppose I am still.

Q. Prior to 1870 and subsequently you were a practicing lawyer?

A. Yes.

Q. Were you professionally connected with the Philadelphia and Reading Railroad Company in times past?

A. My connection with the old Reading Railroad Company began in 1870. I was first employed as counsel in Berks County, and then gradually I became one of the counsel who was called in confidentially under the Gowen administration, and when Mr. Corbin became president I became a director and continued to serve as one of the counsel. I was on the executive committee during the Corbin administration. 49
When Mr. McLeod became president, I resigned as a director and ceased to have any relation with the administration other than as local counsel and counsel designated at times to try particular cases; what I mean by that, I no longer sustained any confidential relation to the management of the railroad. After the receivership in 1893 I was again called in as advisory counsel to the receivers and became a director again, I think in the election of 1893 or 1894, I do not remember which, and I continued in that relation until April, 1901, when I was made president of the reorganized companies.

* * * * * * * *

* * * In December, 1900, I happened to be in New York, and I was told that the gentlemen who controlled the New Jersey Central were tired of it, and that the stock was for sale. I was also told that the Baltimore & Ohio Railroad had made an offer for this stock, which the parties had refused, because they considered it too small. This information was a great surprise, and I at once went to Mr. Morgan, who was a voting trustee of the Reading Company, and told him that the situation was most alarming; that it would be the ruin of the Reading property if an antagonistic company got control of the Jersey Central, or if the Baltimore & Ohio got us by the throat in that way and could control our terminals into New York, and that therefore the matter called for prompt action. I told him then 50
that I always thought that the Jersey Central could be legally bought; that the limitations in the laws of New Jersey applied only to leasing, and that under the powers of the Reading Company and under the statutes of New Jersey we could undoubtedly buy a majority of the stock. He told me to keep my own counsel, and look up the whole subject, and see what could be done. I came home, and I made a critical and careful examination of the reports of the New Jersey

Central Railroad for a number of years, to see what, in my judgment, its stock would be worth, taking into account the future possibilities. I also took up the question of how we could buy it and finance it. I made a report to Mr. Morgan in about a week's time. It took me a good while to get all the information I got, because I had to do it secretly, you know, as counsel. I sent it to Mr. Morgan, and it was such a long letter that he did not read it until in a few days I called his attention to it, and then he picked it up and read it in the evening, after business hours. When I got home, one night in Reading, there was a call at the telephone, and I went to the phone, and Mr. Morgan was there, telling me to come to New York immediately; that I must come on at once about that Jersey Central business. I went to New York the next morning. I saw Mr. Morgan, and told him that if he thought the financial plan was sound and he could
51 back it—it involved that collateral trust mortgage, you know, and the borrowing of money—that I would be responsible for the rest of it; that I thought it was sound. He said to me, "What do you think is the fair price?" I said, "I have named what I think is the fair price in there." He called for Mr. Baker, who was the chairman of their committee, or a leading man in it. Mr. Baker came over and we sat down and dickered for about five minutes, until Mr. Baker said they would take one hundred and sixty, and I said I thought I would advise that, and I went to the phone and called up Mr. Welsh and Mr. Harris, who were, with myself, a majority of the executive committee, and they said "Yes," and the deal was closed. That is the whole story. We did not even make a writing about it. Mr. Baker said he would undertake himself and with Mr. Maxwell and friends to deliver us a majority of the stock. I do not know what further I can say about it.

* * * * * * *

Cross-examination by Mr. McREYNOLDS:

* * * * * * *

Q. You were counsel for the parties interested in reorganizing the Reading Company after the receivership of 1896, as I understand?

A. Receivership of 1893?

52 Q. Yes, sir; the receivership of 1893. The reorganization took place in 1896.

A. Yes, final reorganization.

Q. Prior to that receivership of 1893, is it correct that the Philadelphia and Reading Railroad Company owned all the stock of the Philadelphia and Reading Coal and Iron Company?

A. Yes, excepting that which was required to qualify directors.

Q. Who now owns all of the shares of the Philadelphia and Reading Coal and Iron Company?

A. The Reading Company owns it, with the exception of such shares as are necessary to qualify directors.

By Judge CAMPBELL:

Q. Subject to the liens?

A. That is understood. What do you mean by that?

Q. It is pledged?

A. I know it is pledged. Its stocks are all pledged in the general mortgage.

By Mr. MCREYNOLDS:

Q. What else does the Reading Company own?

A. What do you mean—in the way of stocks?

Q. Yes, sir; or anything else. I ask you only generally, of course, not to go into detail.

A. The Reading Company owns the stock of the Philadelphia and Reading Railway Company; it owns the stock of the coal and iron company; it owns the stock of the Reading Iron Company; and it owns the stock of quite a number of subsidiary railroad companies. 53
The list is given in our annual report.

Q. Does it own any railroad equipment?

A. The Reading Company owns the equipment.

Q. What equipment?

A. The rolling equipment—what we call the rolling equipment—and leases it. Both the railroad equipment and the marine equipment was owned by the Reading Company, and it leased that equipment to the Reading Railway Company.

Q. Prior to the receivership of 1893, did the Philadelphia and Reading Railway Company own its own equipment?

A. Yes, sir.

Q. When the reorganization took place, a new railroad company was formed under the laws of Pennsylvania, called the Philadelphia and Reading Railway Company?

A. Yes.

Q. And that company took over what property from the receivers?

Judge CAMPBELL. Not from the receivers; from the purchasers.

By Mr. MCREYNOLDS:

Q. Whatever the arrangement was?

A. The Philadelphia and Reading Railroad Company was foreclosed on a mortgage, and the property was purchased by a committee representing the security holders, a reorganization committee. The real estate of the Coal and Iron Company was also sold, because it 54
was included in the general mortgage. The Reading Railroad Company and the Coal and Iron Company were joined in a mortgage. The franchises of the Coal and Iron Company were not sold, because we wanted to preserve them. The receivers also sold the property

under a decree that was not covered by the mortgage, and the purchasers bought that in, and then we reorganized the whole system by making the Reading Company the holding company, and the railroad properties were transferred to the new Reading Railway. The coal properties were reconveyed to the Coal and Iron Company, whose franchises had not been disturbed, and the iron properties, which the old railroad company owned, were transferred to the Reading Iron Company, which was also an iron company. All the stock, practically, except to qualify directors, was owned by the Reading Railroad Company. The four great companies, therefore, were: The Reading Company, the holding company; the Philadelphia and Reading Railway Company, taking the railroads over subject to prior liens and mortgages; the Coal and Iron Company, to whom the coal property was again conveyed, its debts being paid; the Reading Iron Company, which was not affected and not sold out in the foreclosure—it was an independent company—and the stock simply was sold, and then the iron properties, of which there were not very many of any value, which all formerly belonged to the rail-
55 road company, were conveyed to the Reading Iron Company.

Q. So that the result now is that the coal properties have their title in the Philadelphia and Reading Coal and Iron Company?

A. Yes, sir.

Q. The iron properties have title in the Reading Iron Company?

A. Yes, sir.

Q. And the Philadelphia and Reading Railway Company owns the tracks and rails——

A. And the terminals.

By Judge CAMPBELL:

Q. And leasehold?

A. And leasehold.

By Mr. McREYNOLDS:

Q. That formerly belonged to the Philadelphia and Reading Railroad Company?

A. Yes, sir.

Q. And the Reading Company owns the equipment?

A. The Reading Company owns the equipment.

Q. And leases it to the railroad company?

A. Yes, sir.

Q. Why was this changed arrangement made when that receivership was closed up? Why did not the railroad company take over the property of the coal company and hold it as it formerly did? Why was this holding company interposed?

56 A. For purposes of convenient financing, and for the purpose of creating securities to meet the reorganization plan. The old stock-

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olders and bondholders of the Reading Railroad Company had to contribute certain amounts of money, and it was thought wise to reorganize the whole system in this way. It was a financial reason primarily. The Reading Company then created the securities, and created a collateral trust mortgage.

Q. Could not that have been done with the railroad?

A. No, it could not have been done under our laws. The railway company could not have held under a reorganization.

Q. Why?

A. Because there was no statutory power.

Q. It did hold under the old system?

A. I know, but when we reorganized we had to accept the provisions of the new constitution, which prohibits that.

* * * * * * *

By Mr. McReynolds:

Q. What fixes the freight rates for the Reading Road?

A. It is hard to tell what fixes the freight rate. It is fixed by long custom. They have never been changed in my administration. The cost of transportation, the cost of assembling the coal, the cost of terminal facilities—all those things—competitive conditions fix rates.

Q. Do competitive roads have anything to do with it?

A. Certainly, in certain districts they have—in all districts. You 57
can not have a different freight rate, for example, to New York Harbor, where there are many roads coming in together. You have to meet their competitive freight rate. The explanation I gave this morning covers that.

Q. What do you regard as the competitors of the Philadelphia and Reading now in New York Harbor, as to anthracite coal?

A. All of the companies.

Q. Won't you be good enough to name them for us?

A. All the companies that ship to New York. They would be the Pennsylvania Railroad, the Lehigh Valley, the Delaware and Lackawanna, the Delaware and Hudson, the Erie, Ontario and Western. I guess those are all the roads leading to New York directly or indirectly.

Q. Those roads are all carrying anthracite coal to the New York Harbor?

A. Yes, sir.

Q. And you regard them as competitors who must be considered in fixing rates?

A. Yes, sir; unquestionably.

Q. When you first knew the Lehigh and Wilkes-Barre Coal Company, what business was it engaged in?

A. The mining and selling of coal.

Q. What territory did it sell its coals in?

E IN CENTER

58 A. Its territory was limited to the East. The explanation of that is this: Some agreement in the lease of the Lehigh and Susquehanna Railroad to the Central Railroad of New Jersey requires the coal, with the exception of twenty-five per cent, produced by the Lehigh Navigation Company, to be sent over the Lehigh and Susquehanna Railroad, because it is in the nature of a partnership. The Lehigh and Susquehanna earnings are divided between the Lehigh Navigation Company and the Central; and there was a collateral covenant in one of the agreements by which the coal tributary to the Jersey Central, that it could control in all its corporations, should be sent over this road as far as it was possible. So the Lehigh and Wilkes-Barre territory is a confined territory. It ships no coal West.

Q. It does to all the eastern markets?

A. Yes, sir.

Q. Ships coal to New York Harbor?

A. Yes, sir.

Q. And to New England points?

A. Yes, sir.

Q. And has been engaged in that business since 1890?

A. Ever since I knew the company; 1890, yes—1901 when I first took control of it.

Q. Is it engaged in the same business now?

A. Yes.

59 Q. Prior to 1901 were the Philadelphia and Reading Coal and Iron Company and the Lehigh and Wilkes-Barre Company competitors as sellers of coal in New York Harbor?

A. Yes; and they are to-day.

Q. And generally throughout the eastern territory they were competitors at that time?

A. Yes, sir; through that northern territory. Not in this territory, nor in the southern.

* * * * * * *

Q. Does the Lehigh and Wilkes-Barre Coal Company pay dividends?

A. No.

Q. Has it ever?

A. Not in twenty-five years, I guess.

Q. Does the Jersey Central advance it money from time to time?

A. Not now. The Jersey Central many years ago took the control of the Lehigh and Wilkes-Barre and had to guarantee mortgages, and advanced large sums of money. That was before our acquisition of the Lehigh and Wilkes-Barre. The Lehigh and Wilkes-Barre of late years has been paying off some of the advances that the Jersey Central made from time to time.

Q. As the president of the Central Railroad Company of New Jersey, you seem to have signed its answer in the equity cause wherein the United States was complainant and the Central Railroad Company of New Jersey and others were defendants, commonly known as the commodities clause. There are some things in the answer that I want to ask you about, to bring out the facts. You can answer whether that is true or not. I ask you if you did not do that? 60

A. Yes.

Q. In that answer it is said, "This defendant alleges that throughout its corporate existence the transportation of coal from the anthracite coal fields of Pennsylvania has constituted its principal business and the chief source of its earnings." Do you understand that to be the fact?

A. I should think so. It transports the coal of the Lehigh and Wilkes-Barre and it transports the coal of the navigation company. I suppose at the time that was supposed to be correct.

Q. That was about a year ago?

A. Yes, sir. I think that was a general statement. I think that was so. It was prepared with a good deal of care.

Q. I call your attention (and the stenographer may copy it later) to the portion of this answer beginning with paragraph 12, and ask you to state whether the facts stated there are in harmony with your present understanding, and if so, the stenographer will copy it in as part of the record.

A. I think that is a fair statement of the facts referred to.

(The paragraph in the answer above referred to is as follows:) 61

This defendant, further answering, says that anthracite coal is an article of prime necessity and is universally used for domestic purposes throughout New England and the Middle Atlantic States, and to a great extent throughout other sections of the country. The source of the entire supply, save a few small deposits of inferior quality, is located within the State of Pennsylvania, and the deposits extend over an area of only about 484 square miles, divided for trade purposes into three "regions," the Wyoming (sometimes called the Lackawanna) region, the Lehigh region, and the Schuylkill region. Ninety per cent, approximately, of the entire unmined area of anthracite coal is owned or controlled by the following-named companies or by "subsidiary coal companies," so-called; that is, companies in which they have an entire or controlling stock interest, viz, the Reading Company, the Pennsylvania Railroad Company, the Delaware, Lackawanna and Western Railroad Company, the Lehigh Valley Railroad Company, the Central Railroad Company of New Jersey, the Delaware and Hudson Company, the Erie Railroad Company, and the New York, Ontario and Western Railroad Company, and from seventy to seventy-five per cent of the annual supply of anthracite coal in the United States is and for many years past has been produced either directly by said companies, as in the case of the Delaware, Lackawanna and Western Railroad, the Delaware and 62

Hudson Companies, or through the agency of the said "subsidiary" coal companies.

The entire distribution of anthracite coal in and into the different States of the Union and Canada for the year 1905, the latest normal year in which there was no strike, and for which complete statistics are at hand, was as follows:

	Tons.
New England States	8,692,504
New York	18,125,419
New Jersey	7,212,341
Supply coal to railroads	4,643,426
Southern States	2,080,088
Western States	6,904,314
Canada	2,187,450
Other foreign countries	42,533
Pacific coast	1,743
Pennsylvania	11,520,383
Total	61,410,201

Approximately four-fifths of this entire production of anthracite coal was transported in interstate commerce over the railroads named from Pennsylvania to markets in other States and Canada. Approximately the same proportion of the entire production of anthracite coal has been so transported from Pennsylvania to other States and
63 countries for many years before 1905, and ever since. The total output of anthracite coal for the year 1906 was 55,698,595 tons. That for the year 1907 exceeded 68,000,000 tons. That part of the output of anthracite not consumed in the State of Pennsylvania is carried chiefly to tidewater at New York Harbor and is thence transported by water and by railroad to points in New England and the Middle Atlantic States, where the great bulk of the anthracite output is consumed. New York Harbor is the principal distributing point for anthracite coal.

Also testimony of William R. Taylor, contained in volume 2, pages 188 to 199, inclusive, as follows:

WILLIAM R. TAYLOR, a witness for the plaintiff, having been duly sworn, was examined as follows:

Direct examination by Mr. MCREYNOLDS:

Q. What is your residence and occupation?

A. I reside at 6445 Drexel Road, Philadelphia, and I am the secretary of the Reading Company, and also vice president.

Q. How long have you been secretary of the Reading Company?

A. Since 1902. Previous to that time I had been secretary, before some changes were made. I have been vice president of the company since 1897.

Q. What connection have you with the Philadelphia and Reading Railway Company?

64 A. I am secretary.

Q. How long have you been such secretary?

A. Since its organization, in 1896.

Q. What connection have you with the Philadelphia and Reading Coal and Iron Company?

A. Vice president. I think I was made one of the vice presidents of the Philadelphia and Reading Coal and Iron Company in 1897.

Q. What connection had you with the Philadelphia and Reading Railroad Company?

A. I was secretary of the Philadelphia and Reading Railroad Company from 1886 up to the time of the foreclosure, in 1896.

Q. What connection, during the years from 1886 to 1896, did you have with the Philadelphia and Reading Coal and Iron Company?

A. No connection whatever.

Q. What is the par value of the shares of the Reading Company?

A. Fifty dollars a share.

Q. And of the Philadelphia and Reading Railway Company, and of the Philadelphia and Reading Coal and Iron Company?

A. Each $50 a share.

Q. What part of the capital stock of the Philadelphia and Reading Railway Company is owned by the Reading Company?

A. All of the capital stock of the railway company is owned by the Reading Company.

Q. That stock is hypothecated, is it not, with some trust company? 65

A. It is deposited with the Central Trust Company of New York, as trustee of the general mortgage of the Philadelphia and Reading Railway Company.

Q. To secure these mortgage bonds?

A. Yes, sir.

Q. Does the stock stand on the books of the Philadelphia and Reading Railway Company in the name of the Central Trust Company of New York?

A. Yes, sir.

Q. At the stockholders' meetings of the Philadelphia and Reading Railway Company, how is that stock voted?

A. By proxy given by the Central Trust Company of New York and the Reading Company jointly.

Q. What do you mean by that?

A. The proxy is executed by the Reading Company and the Central Trust Company of New York, as trustee.

Q. You mean the proxy is executed by those parties jointly?

A. Yes, sir.

Q. Who has held that proxy?

A. The president of the Philadelphia and Reading Railway Company, for the time being; Mr. Harris, when he was president of the Philadelphia and Reading Railway Company, and Mr. Baer since that time.

66 Q. At all meetings of the Philadelphia and Reading Railway Company since 1896 the president of the Reading Company has held the proxy to vote the shares?

A. The president of the Philadelphia and Reading Railway Company; yes, sir.

Q. And the president of the Philadelphia and Reading Railway Company and the president of the Reading Company has been the same individual?

A. Yes, sir.

Q. Who owns the share capital of the Philadelphia and Reading Coal and Iron Company?

A. The Reading Company.

Q. In whose name do those shares stand on the books of the coal company?

A. In the name of the Central Trust Company of New York, trustee.

Q. How are those shares voted at the stockholders' meetings of the coal company?

A. By proxy executed by the Central Trust Company and the Reading Company jointly.

Q. And who has held that proxy since 1896?

A. The president of the Philadelphia and Reading Coal and Iron Company.

Q. And the president of the Philadelphia and Reading Coal and Iron Company during all these years has been the same person who was the president of the Reading Railway Company and of the

67 Reading Company, has he not?

A. Yes, sir.

Q. Are dividends paid on the capital stock of the Philadelphia and Reading Railway Company?

A. Yes, sir.

Q. To whom are they paid?

A. Paid to the Reading Company.

Q. When did the Philadelphia and Reading Railway Company begin to pay dividends upon its capital stock to the Reading Company?

A. I am not sure that I can give the date. I think it was about 1902.

Q. Have such dividends been paid each year since that time?

A. Yes, sir.

Q. Can you tell us what those dividends have been?

A. For the last two years, I think, they have been at the rate of 30 per cent. Previous to the last two years, I think 20 per cent.

Q. For how long?

A. I am not sure that they paid 20 per cent. I think 15 per cent was the first.

Q. And then they were increased to 20?

A. Yes, sir.

Q. And then increased to 30?

A. Yes, sir. 62

Q. During the last two years the dividends have been 30 per cent?

A. Yes, sir.

Q. Are dividends paid on the capital of the Philadelphia and Reading Coal and Iron Company?

A. No, sir.

Q. Have any dividends ever been paid on the share capital of that company?

A. No, sir.

Q. What do its annual statements show in the way of profits or loss? I mean of the Philadelphia and Reading Coal and Iron Company?

A. The Philadelphia and Reading Coal and Iron Company, for the year ending June 30, 1908, showed sufficient income to pay to the Reading Company interest on the amount that stands on the books of the Reading Company against the Philadelphia and Reading Coal and Iron Company, amounting to about $80,000,000, at the rate of 2 per cent, and it had a small surplus beyond that.

Q. For the years prior to the year 1908, what was the showing as the result of the year's work?

A. The Philadelphia and Reading Coal and Iron Company has been able to pay to the Reading Company interest on that sum that I mentioned from the year 1902, I think it is.

Q. At the rate of 2 per cent?

A. No; they began at 1½ per cent, and then 1¾, and reached 2 per 69 cent; and 2 per cent has been the highest.

Q. Is that $80,000,000 in the form of bonds?

A. No, sir.

Q. What shape is it in?

A. It is a charge on the books of the Reading Company against the Philadelphia and Reading Coal and Iron Company.

Q. For money advanced upon account?

A. Money that had previously been advanced by the old Philadelphia and Reading Railroad Company, which was carried over in the reorganization.

Q. Do I understand that the old Philadelphia and Reading Railroad Company advanced out of its treasury to the Philadelphia and Reading Coal and Iron Company a sum amounting to eighty millions of dollars?

A. No, sir. The present $80,000,000 does not represent all of those advances that had previously been made by the Philadelphia and Reading Railroad Company, because since the reorganization, the coal company's bonds out at the time of the reorganization, amounting to $12,000,000, have been replaced by general mortgage bonds of the Reading Company, and the Reading Company has, therefore, charged against the coal company a corresponding amount.

Q. Prior to the reorganization and the formation of the Reading Company the old Philadelphia and Reading Railroad Company had
70 advanced at least $80,000,000 out of its treasury to the Philadelphia and Reading Coal and Iron Company?

A. No; as I explained, the amount was not eighty millions of dollars at that time. I think at the time of the rorganization the amount due by the coal company to the old Philadelphia and Reading Railroad Company was probably sixty-eight or seventy millions of dollars.

Q. And the rest is made up by this $12,000,000 bond transaction which you have just explained?

A. Yes, sir.

Q. When did the Reading Company acquire the shares of the Philadelphia and Reading Coal and Iron Company?

A. They were transferred to the Reading Company by Messrs. Coster and Stetson at the time of the foreclosure sale of the property of the Philadelphia and Reading Railroad Company in 1896.

Q. Do you know when the Philadelphia and Reading Railroad Company first acquired the shares of the Philadelphia and Reading Coal and Iron Company?

A. Yes, sir. At the time of the organization of the Philadelphia and Reading Coal and Iron Company, in 1871.

Q. Did it acquire all the shares of the coal company at that time?

A. Yes, sir.

Q. And held them until the time they were sold out in 1896 under the receiver's proceeding?

71 A. Yes, sir.

Q. Has the Philadelphia and Reading Coal and Iron Company ever paid a dividend since 1870?

A. No, sir.

Q. On the statement showing the collieries along the lines of the Philadelphia and Reading Railway Company there are certain columns headed "Weigh scale" and "Manifesting point." What is the meaning of that term "weigh scale"?

A. I am not sufficiently familiar with that to say.

Judge CAMPBELL. The various weight scales on the lines of the Philadelphia and Reading Railway Company are the points to which laden cars of coal are carried from the various collieries over

its various lateral lines. There these cars are weighed and afterwards put in course of transportation to destination in trains. The manifesting point is where the billing is done, where the bills of lading and the shipping receipts showing the ownership of the property while it is in transit are made out.

By Mr. McREYNOLDS:

Q. Does the Reading Company or the Philadelphia and Reading Railway Company own stock in any anthracite coal company except the Philadelphia and Reading Coal and Iron Company?

A. The Philadelphia and Reading Railway Company does not 72
own stock in any coal company at all. But the Reading Company has an interest in some of the subsidiary companies of the Philadelphia and Reading Coal and Iron Company, such as the Fulton Coal Company, the Mammoth Vein Coal and Iron Company, the Locust Gap Improvement Company, the Preston Company, and probably a few others. As far as the Philadelphia and Reading Railway Company is concerned, it has no interest in any coal company.

Q. What is the relationship between the Reading Company and the Reading Iron Company?

A. The Reading Company is the owner of all the capital stock of the Reading Iron Company.

Q. What business is the Reading Iron Company in?

A. The manufacture of pipe, large machinery, cotton presses, etc.

Q. Where are its works located?

A. At Reading, Pa.

Q. What is its capital stock?

A. A million dollars.

Q. How long has it been in operation there?

A. It has been in operation as the Reading Iron Company, I think, since about 1883 or 1889; but it has been in existence, under different ownership, for probably thirty-five years.

Q. Was all the stock of the Reading Iron Company owned by the old Philadelphia and Reading Railroad Company?

A. Yes, sir. This stock has been deposited by the Reading Company with the Central Trust Company of New York as trustee of its general mortgage.

Q. What is the relation between the Reading Company and the 73
Port Reading Railroad?

A. The Reading Company is the owner of all the capital stock of the Port Reading Railroad Company.

Q. Where is the Port Reading Railroad?

A. The Port Reading Railroad runs from a point near Bound Brook, N. J., to Port Reading, a point on the Kill von Kull.

Q. Port Reading is a tidewater port on the New York lower bay?

A. Yes, sir.

Q. Port Reading Junction is the point near Bound Brook, from which the road starts, is it not?

A. Yes, sir.

Q. How long is the line of this Port Reading Railroad?

A. I am not sure I can give you the mileage of it.

Q. Give us approximately.

A. I should say between 25 and 30 miles.

Q. When was this road constructed?

A. I should say in 1890 or 1891.

Q. By what company was it constructed?

A. It was promoted by the Philadelphia and Reading Railroad Company.

Q. And constructed in the name of the Port Reading Railroad Company, was it?

A. Yes, sir.

74 Q. Is the Port Reading Railroad Company a New Jersey corporation?

A. Yes, sir.

Q. Was all of the stock of the Port Reading Railroad Company owned by the Philadelphia and Reading Railroad Company?

A. Yes, sir.

Q. From the time it was organized until the time it was sold out under the receiver's proceedings in 1896?

A. Yes, sir.

Q. And since 1896 all the stock of that railroad company has been held by the Reading Company?

A. Yes, sir.

Q. Where is the stock of this Port Reading Railroad Company now? Has it been hypothecated, or is it held in the treasury of the Reading Company?

A. A million five hundred thousand dollars of that stock has been deposited with the Central Trust Company of New York as trustee of the Philadelphia and Reading Railway Company's general mortgage, and in the neighborhood of $500,000 worth of stock has been deposited with the Pennsylvania Company for Insurances on Lives and Granting Annuities, trustee of the Reading Company's Jersey Central collateral trust loan.

Q. Am I right in concluding from what you have said that the Philadelphia and Reading Railroad Company originally furnished all the money for the construction of this Port Reading Railroad?

75 A. Yes, sir; at the time of the foreclosure all the stock of the Port Reading Railroad Company had not been issued. I think a million and a half had been issued then. Since that time the Port Reading Railroad Company has delivered to the Reading Company

the $500,000 of stock to represent advances that had not been represented by the stock previously.

Q. Since the organization of the Port Reading Railroad Company in 1890 who have been its presidents?

A. The president has always been identical with the president of the Philadelphia and Reading Railroad Company and the Philadelphia and Reading Railway Company.

Q. Have the operating officers been the same as the operating officers of the Philadelphia and Reading Railroad Company?

A. Practically.

Q. What has been the arrangement between the two corporations in reference to through shipments of freight?

A. I am not familiar with that.

Q. Were you the secretary of the Philadelphia and Reading Railroad Company at the time this Port Reading Railroad Company was projected and constructed?

A. Yes, sir.

Q. What was the purpose of its construction?

A. To furnish the Philadelphia and Reading Railroad Company with an outlet to New York Harbor.

Q. Since the construction of this Port Reading Railroad Company 76
has it been operated as a part of the system of the Philadelphia and Reading Railroad Company and of the Philadelphia and Reading Railway Company?

A. Practically; yes, sir.

Q. And utilized by it for the purpose of sending through freight to tidewater and New York Harbor?

A. Yes, sir.

Q. Can you describe to us the general course over which coal carried by the Philadelphia and Reading Railway Company moves from the coal regions in Pennsylvania to tidewater at New York Harbor?

A. It would not be from any accurate knowledge that I have on that subject. I could give you just general information that I have.

Q. Please do so.

A. The coal comes down the main line, which is from the vicinity of Pottsville, generally to a point on the main line near Bridgeport, and there it either crosses the river and goes by the Plymouth branch to the junction with the North Pennsylvania Railroad at Jenkintown, or else it goes all the way to Philadelphia, and goes by way of Wayne Junction and thence to the North Pennsylvania Railroad, and over the North Pennsylvania Railroad to the middle of the Delaware River, Yardley, and there it goes on the Delaware and Bound Brook Railroad, which is a leased line of the Philadelphia and Reading Railway Company, and proceeds to Port Reading Junction and thence to Port 77
Reading at tide.

Q. What do you mean by the North Pennsylvania Railroad?

A. The North Pennsylvania Railroad is one of the Philadelphia and Reading Railway Company's leased lines. The Plymouth Railway is also.

Q. What dividends are paid by the Reading Company to its stockholders?

A. The Reading Company pays 4 per cent per annum on all of its issues, being first preferred, second preferred, and common stock.

Q. How long has it paid 4 per cent?

A. It paid 4 per cent on its common stock, I think, since 1904, and on the second preferred probably a year or two previous to that, and on the first preferred for a longer period.

Q. What are the sources from which the Reading Company derives its income?

A. Principally from its investment in the securities of other corporations. It has some income from real estate it owns, but that is not very large.

Q. What is the principal corporation from which it derives its income?

A. From the Philadelphia and Reading Railway Company.

Q. What proportion of its income is derived from the Philadelphia and Reading Railway Company?

78 A. I do not know that I can give you the percentage. I should say that it was at least 75 per cent.

Q. Were you connected with the National Company at the time when its name was changed to the Reading Company?

A. Yes, sir; I was the secretary of that company.

Q. Were you connected with that company when it was called the Excelsior Enterprise Company?

A. No, sir.

Q. You were secretary of the National Company at the time its name was changed to the Reading Company?

A. Yes, sir.

Q. What was its business at that time?

A. The National Company at that time merely kept up its organization, held its annual meetings regularly, and elected officers every year.

Q. It had no other business except to preserve its organization?

A. That is all.

Q. How long had that condition of affairs existed with the National Company before its name was changed to the Reading Company?

A. Our experience with the National Company was in connection with the lease of the Delaware and Bound Brook Railroad, which was in 1879. Among the assets of the Delaware and Bound Brook Rail-

road Company that we received in connection with the lease we acquired the stock of the National Company.

Q. Then, from 1879 until its name was changed to the Reading 79
Company, the National Company had no business except to preserve its organization?

A. I will not say it had no business. I say that is all it did.

Q. Did it own any property?

A. I believe there were some securities of some old railroads that it had been interested in previously.

Q. That were substantially worthless?

A. That had no value.

Q. Do you remember what the capital stock of the National Company was?

A. Fifty thousand dollars.

Q. Did it pay any dividends?

A. No, sir.

Q. Who was its president?

A. At the time of the reorganization?

Q. Yes.

A. Mr. Joseph S. Harris.

Q. And had its president always been the president of the Philadelphia and Reading Railroad Company?

A. Yes, sir.

Q. You were the secretary of the Reading Company when it acquired 145,000 shares of the capital stock of the Central Railroad Company of New Jersey in January of 1901, were you not?

A. I am not sure that I was secretary at the time, but I was the 80
vice president.

Q. You were either vice president or secretary?

A. Yes, sir.

Q. Who negotiated that purchase?

A. Mr. George F. Baer, I think.

Q. Do you remember the price paid for those shares of the Central Railroad Company of New Jersey?

A. $160 a share.

Q. How did the Reading Company get the money to pay that purchase price?

A. The Reading Company sold its issue of $23,000,000 Central Railroad Company of New Jersey collateral trust bonds and certain shares of first and second preferred stock, I think.

Q. And the shares which it acquired in the Central Railroad Company of New Jersey were hypothecated to secure those bonds?

A. Yes, sir.

Q. Were those shares of the Central Railroad Company of New Jersey acquired by an exchange of these securities or were the securi-

ties sold in the market and the cash paid to the holders of the shares of the Central Railroad Company?

A. The stock of the Central Railroad Company was purchased for cash.

Q. The Reading Company still owns these 145,000 shares of Cen-
81 tral Railroad Company of New Jersey stock?

A. Yes, sir.

Q. How are those shares voted in the stockholders' meetings of the Central Railroad Company of New Jersey?

A. By a proxy given by the Pennsylvania Company for insurances on lives, etc., as the trustee, executed jointly with the Reading Company as the beneficial owner.

Q. Who has held that proxy?

A. Mr. Baer, the president.

Q. Are dividends paid on these shares of the Central Railroad Company of New Jersey?

A. Yes, sir.

Q. To whom?

A. To the Reading Company.

Q. What interest has the Reading Company in the equipment used by the Philadelphia and Reading Railway Company?

A. The Reading Company is the owner of all the equipment, subject to a pledge of a large part of that equipment with the Central Trust Company of New York, as trustee of its general mortgage.

Q. You mean by that, do you, that the Reading Company owns all the engines and cars which are operated by the Philadelphia and Reading Railway Company?

A. Yes, sir.

Q. What is the arrangement between the Reading Company and the Philadelphia and Reading Railway Company in reference to that equipment?

82 A. The railway company pays a fixed rental for the use of that equipment to the Reading Company.

Q. Has that been the arrangement which has existed between the Reading Company and the Philadelphia and Reading Railway Company since 1896?

A. Yes, sir.

Q. You were connected with the Philadelphia and Reading Railroad Company at the time the Port Reading Railroad Company took a lease of the Jersey Central Railroad Company, were you not?

A. Yes, sir.

Q. Do you know whether about that same time a contract was made by the Lehigh and Wilkes-Barre Coal Company agreeing to sell its output of coal to the Philadelphia and Reading Coal and Iron Company?

A. I know there was some contract made at that time, but I do not recall the nature of it.

Q. Have you access to those records?

A. Yes, sir.

Q. If there is such a contract, will you produce a copy of it and make it "Government Exhibit No. 142" to your deposition?

A. Yes, sir.

Q. About this same time do you know whether the Philadelphia and Reading Railroad Company took a lease of the Lehigh Valley Railroad Company's lines?

A. Yes, sir.

Q. Do you remember the date of that? 83

A. February, 1892, I think it was.

Q. What became of that lease?

A. That lease was surrendered in August, 1893.

Q. What became of the lease that was taken by the Port Reading Railroad of the Central Railroad of New Jersey?

A. That was dissolved, I think, in December, 1892.

Q. That was subsequent to the decree by the chancellor in New Jersey, holding that it was contrary to law?

A. Yes, sir.

(The witness subsequently furnished a copy of the contract dated April 30, 1892, between the Lehigh and Wilkes-Barre Coal Company and the Philadelphia and Reading Coal and Iron Company, referred to in his testimony, and it was introduced in evidence, marked "Government Exhibit No. 142.")

Cross-examination by Judge CAMPBELL:

Q. You answered that you were vice president of the Philadelphia and Reading Coal and Iron Company, as well as an official of the railway company and of the Reading Company. State whether or not as such vice president you have any active duties whatsoever in connection with the conduct of the business of the Coal and Iron Company other than to execute documents in the name of the company when advised by counsel that they are required in the conduct of the business of that company?

A. That is all.

Q. Referring to the Port Reading Railroad Company, do you not 84
recall that while its construction was promoted by the Philadelphia and Reading Railroad Company for the purposes which you indicate, of gaining an outlet on the New York waters for our business, that in point of fact the stock of that company was subscribed for by the Port Reading Construction Company?

A. Yes, sir.

Q. And that the Port Reading Construction Company negotiated a series of bonds provided for the Port Reading Company which were

negotiated, and out of which it provided the means for constructing that railroad?

A. Yes, sir.

Q. And that in the meantime, and until after the surrender by the Port Reading Company of its lease of the properties of the Central Railroad Company of New Jersey, that stock never was held or owned by the Philadelphia and Reading Railroad Company?

A. I had forgotten that.

Q. The gentleman's question led you to say, which of course you did not mean to say, that the traffic of the Philadelphia and Reading Railroad system destined to and from points in New York Harbor is confined to the line of the Port Reading Railroad. State whether or not the fact is that no other traffic proceeds over the Port Reading Railroad except coal traffic.

85 A. Of course, that is what I understood he referred to.

Q. Your general merchandise and other freight traffic, besides anthracite and bituminous coal, proceed to New York Harbor over the lines of the Central Railroad Company of New Jersey from Bound Brook Junction to Jersey City?

A. Yes, sir.

Q. Also all the passenger traffic interchanged between the two companies that goes west of Bound Brook?

A. Yes, sir.

Q. The Philadelphia and Reading Railway Company also has an outlet over the lines of the Central Railroad of New Jersey at Allentown?

A. Yes, sir.

Q. Over which large quantities of traffic of bituminous coal and general merchandise are interchanged?

A. Yes, sir.

Q. And passenger traffic?

A. And passenger traffic.

Q. The Philadelphia and Reading Railway system, through its leased line, the North Pennsylvania Railroad, has another connection with the lines of the Central Railroad Company of New Jersey at South Bethlehem, through which all sorts of traffic, freight and passenger, are interchanged?

A. Yes, sir.

Q. The Philadelphia and Reading Railway system has another connection through its Catawissa Railroad leased line, with the lines

86 of the Central Railroad of New Jersey at Tamanend?

A. Yes, sir.

Q. Where traffic is also interchanged?

A. Yes, sir.

Q. The gentleman has inquired about the dividends actually paid on the various issues of shares of the Reading Company. Your answers are somewhat confusing. Please prepare a statement showing the time of the beginning of the payment of dividends on each class of its stock from time to time up to the present, and attach this statement to your answer as an exhibit.

A. I will look this up and furnish the information requested.

(The witness furnished the following statement:)

Statement of dividends paid by Reading Company.

Calendar year.	First preferred stock ($28,000,000).	Second preferred stock ($42,000,000).	Common stock ($70,000,000).
	Per cent.	*Per cent.*	*Per cent.*
1900	3		
1901	4		
1902	3		
1903	4	1½	
1904	4	4	
1905	4	4	3½
1906	4	4	4
1907	4	4	4
1908	4	[a] 4	4

[a] Of this, 2 per cent is payable November 10, 1908.

Q. Referring to the National Company, concerning which the gentleman made some inquiries, are you familiar with the old records of that company? 87

A. Generally; yes, sir.

Q. You had occasion to examine into them very carefully about 1896?

A. Yes, sir.

Q. That company had been actively engaged in the construction of a line of railroad in New Jersey for some years?

A. Yes, sir.

Q. For some years prior to the 1st day of January, 1874?

A. Yes, sir.

Q. Are you familiar with the consideration that was given to that subject preparatory to its taking over the business now conducted by the Reading Company in respect of its vitality prior to the adoption of the constitution of 1874?

A. I know that. The charter was examined by counsel for the company and the question submitted to the attorney general of the State of Pennsylvania and a decision rendered by him on the subject.

Q. Which was to the effect that it was a proper corporation?

A. Yes, sir; and had been properly conducted ever since its organization.

Q. As the result of that investigation, did the Commonwealth of Pennsylvania exact the payment of a large sum of money as a bonus
88 on the increase of its capital stock under our statutes?

A. It did, and the money was paid.

Q. Referring now to the surrender by the Port Reading Railroad Company of the lease of the Central Railroad Company of New Jersey and to your answer to the gentleman, I ask you if you can recall that after the interlocutory injunction and decree of the court an appeal was taken by the defendants in that suit to the Appellate Court of New Jersey?

A. I have some recollection of that; yes, sir.

Q. And do you not recall now, since I refresh your recollection, that as a fact it was determined not to prosecute that appeal, but on account of the Port Reading Railroad Company's inability as a business proposition to pay the rental secured by that lease it voluntarily surrendered the property?

A. Yes, sir.

Redirect examination by Mr. McReynolds:

Q. You were asked about the Port Reading Construction Company, which in a practical way constructed the Port Reading Railroad. Who owned the stock of the Port Reading Construction Company?

A. My impression is that was controlled by the Philadelphia and Reading Railroad Company.

Q. And the money that was used in constructing that Port Reading Railroad Company was supplied by the Philadelphia and Reading Railroad Company?

A. Yes, sir.

89 Q. Do you know the arrangement which exists between the Philadelphia and Reading Railway Company and the Central Railroad Company of New Jersey, under which the former company sends the freight from Bound Brook, N. J., to Jersey City?

A. Yes, sir. There is a traffic contract executed between the two companies.

Q. And freight is shipped under that traffic contract?

A. Yes, sir.

Q. On through bills of lading?

A. The agreement provides for that; yes sir.

Q. The Philadelphia and Reading Railway Company, I presume, pays so much annually or a certain part of the freight received for the use of the tracks of the Central Railroad of New Jersey from Bound Brook to Jersey City?

A. I do not remember just what the details of the agreement are, but it is in the form of a contract which had been made by the old

North Pennsylvania Railroad Company before its property had been leased to the Philadelphia and Reading Railroad Company.

Q. That arrangement has existed how long?

A. I think that contract is dated 1876.

Q. Under that contract its freight has moved over the tracks of the New Jersey Central Railroad east from Bound Brook since 1876?

A. Yes, sir.

Q. How long does that contract continue? 90

A. I do not remember that it has any period to expire. I think it would expire by mutual consent of the parties. I am not sure just what the terms are.

Q. Where can that contract be found?

A. We have copies of it at the office.

Q. Will you be good enough, through Judge Campbell, to submit that contract to us so that we may, if so advised, put it on the record?

A. I will do so.

By Judge CAMPBELL:

Q. The interchange of traffic over the rails of the Jersey Central and Reading, North Penn, and Bound Brook is governed by another contract called a "new-line" contract, in which the Baltimore and Ohio Railroad Company is a party, which governs the interchange of traffic over these lines to and from the lines of the Baltimore and Ohio?

A. Yes, sir.

Also testimony of William G. Browne, contained in volume 2, pages 200 to 208, inclusive, as follows:

WILLIAM G. BROWNE, a witness for the plaintiff, having been duly sworn, was examined as follows:

Direct examination by Mr. MCREYNOLDS:

Q. Please examine the Government Exhibits Nos. 24 to 29, inclusive, 91 and put in the record a statement showing which of the shares of the coal companies mentioned therein are owned by the Philadelphia and Reading Coal and Iron Company.

A. The shares of the Locust Gap Improvement Company, standing in the names of the Fidelity Insurance Trust and Safe Deposit Company, trustee; the Central Trust Company of New York, trustee; G. F. Baer, Joseph S. Harris, James M. Landis, W. J. Robinson, Thomas M. Richards, and E. F. Smith, are owned by the Philadelphia and Reading Coal and Iron Company.

The shares of the Fulton Coal Company, standing in the names of the following parties, are owned by the Philadelphia and Reading Coal and Iron Company, namely: The Central Trust Company of

New York, trustee; the Fidelity Insurance Trust and Safe Deposit Company, trustee; George F. Baer, Joseph S. Harris, James M. Landis, W. J. Robinson, Thomas M. Richards, E. F. Smith, and H. A. Wallace.

The shares of the Delaware Coal Company, standing in the names of the Central Trust Company of New York, trustee; the Fidelity Insurance Trust and Safe Deposit Company, trustee; the Philadelphia and Reading Coal and Iron Company, George F. Baer, William G. Brown, Joseph S. Harris, C. E. Henderson, James M. Landis, William H. McEwan, W. J. Robinson, Thomas M. Richards, E. F. Smith, Theodore Voorhees, and H. A. Wallace, are owned by the Philadelphia and Reading Coal and Iron Company.

92 The shares of the Preston Coal and Improvement Company, standing in the names of the Fidelity Insurance Trust and Safe Deposit Company, trustee; George F. Baer, C. E. Henderson, J. S. Harris, James M. Landis, W. H. McEwan, W. J. Robinson, Thomas M. Richards, E. F. Smith, and H. A. Wallace, are owned by the Philadelphia and Reading Coal and Iron Company.

The shares of the Tremont Coal Company, standing in the names of the Fidelity Insurance Trust and Safe Deposit Company, trustee; the Central Trust Company of New York, trustee; George F. Baer, Joseph S. Harris, C. E. Henderson, James M. Landis, W. H. McEwan, W. J. Robinson, Thomas M. Richards, E. F. Smith, and H. A. Wallace, are owned by the Philadelphia and Reading Coal and Iron Company.

The shares of the Mammoth Vein Coal and Iron Company, standing in the names of the Fidelity Insurance Trust and Safe Deposit Company, trustee; the Central Trust Company of New York, trustee; George F. Baer, C. E. Henderson, James M. Landis, the Philadelphia and Reading Coal and Iron Company, Thomas M. Richards, W. J. Robinson, E. F. Smith, and H. A. Wallace, are owned by the Philadelphia and Reading Coal and Iron Company.

By Judge CAMPBELL:

Q. The gentlemen have made you in your testimony contradict the record, which shows the legal title of those various shares to be in the names of those in whom they stand registered on the books of the company. I take it that you mean that the beneficial or equitable ownership of those shares is the property of the Philadelphia and Reading Coal and Iron Company?

93

A. Yes, sir.

By Mr. MCREYNOLDS:

Q. You have said that the beneficial ownership of the various stocks that you have been referring to was in the Philadelphia and

Reading Coal and Iron Company. Who votes the stock at a stockholders' meeting of these several companies?

A. They are voted by proxy. The president of the company, Mr. Baer.

Q. Who issues that proxy?

A. Generally speaking, the parties who hold the legal title give proxies to Mr. Baer, and he votes them.

Q. Do any of these coal companies pay dividends?

A. Yes, sir.

Q. Who collects the dividends?

A. The Philadelphia and Reading Coal and Iron Company receives the dividends.

Q. These statements, Government Exhibits Nos. 24 to 29, show when the stock in the several companies was acquired. Do these statements refer to the original acquisition by the Philadelphia and Reading Coal and Iron Company?

A. They represent the date at which it was transferred to the parties in whose name it stands.

Q. And at some date prior to that time it was acquired by the 94
Philadelphia and Reading Coal and Iron Company?

A. Yes, sir.

(The witness produced a statement showing when the Philadelphia and Reading Coal and Iron Company acquired its interest in the major portion of the share capital of the several companies in question. It is as follows:)

Statement of the Philadelphia and Reading Coal and Iron Company showing the dates when it acquired its interest in the major portion of the share capital of the companies below named.

FULTON COAL COMPANY.

(Share capital, 71,219 shares.)

	Shares.
February 3, 1872	
February 10, 1872	51,234
	51,303

LOCUST GAP IMPROVEMENT COMPANY.

(Share capital, 59,291 shares.)

February 10, 1872	1,[illegible]7
March 12, 1872	40,[illegible]
April 17, 1872	3,859
June 1, 1872	1,500
	47,[illegible]

TREMONT COAL COMPANY.

(Share capital, 120,000 shares.)

February 10, 1872	[illegible]13,[illegible]9

95 MAMMOTH VEIN COAL AND IRON COMPANY.

(Share capital, 69,000 shares.)

	Shares.
February 10, 1872	10,713
March 12, 1872	34,500
	45,213

DELAWARE COAL COMPANY.

(Share capital, 5,268 shares.)

June 30, 1874	4,716

PRESTON COAL AND IMPROVEMENT COMPANY.

(Share capital, 60,000 shares.)

January 27, 1872	500
January 29, 1872	83
February 10, 1872	51,675
	52,258

Q. You have furnished a statement of the number of acres of land in the anthracite region leased and subleased by the Philadelphia and Reading Coal and Iron Company and other companies to third parties?

A. Yes, sir.

Q. Are those third parties corporations or individuals with which the Philadelphia and Reading Coal and Iron Company, or the Reading Company, or the Reading Railway Company have no connection, or are they other companies in which one of those three owns an interest?

A. I think they are principally other people, individuals and cor-
96 porations, in which the Reading Coal and Iron Company has no interest.

Q. Do those leases contain a provision that all the coal mined out of those lands shall be shipped over the lines of the Philadelphia and Reading Railway Company?

A. Yes, sir.

Q. Do they contain provisions concerning the sale of the coal by those lessees?

A. No, sir.

Q. In order to have the record complete, state whether the statements which you have given us show the ownership of all stock in anthracite coal companies by the Philadelphia and Reading Coal and Iron Company?

A. Yes, sir.

Q. Does the Reading Company itself own any stock in any anthracite coal company?

A. I am not connected with the Reading Company. I can not tell you.

Q. You do not know?

A. No, sir.

Q. Is all the coal purchased by the Philadelphia and Reading Coal and Iron Company produced in what is known as the Schuylkill region?

A. Yes, sir; on the lines of the Philadelphia and Reading Railway Company.

Q. But the Philadelphia and Reading Railway Company's lines 97
go into the Lehigh region, do they not?

A. No; they may touch the Lehigh region, but all the coal that is mined by the Philadelphia and Reading Coal and Iron Company is considered as Schuylkill coal and coming from the Schuylkill region.

By Judge CAMPBELL:

Q. But not necessarily from Schuylkill County?

A. No, sir; not necessarily.

By Mr. MCREYNOLDS:

Q. Is all the coal that is purchased by the Philadelphia and Reading Coal and Iron Company produced in the Schuylkill region?

A. Yes, sir.

Q. Do you know the route which coal shipped by the Philadelphia and Reading Coal and Iron Company to New York Harbor takes in its passage to that point?

A. From general information I do; yes.

Q. Does it all go to Port Reading Junction in New Jersey, and from thence by the Port Reading Railroad to Port Reading on the New York Harbor?

A. Yes, sir.

Q. What is the freight rate paid by the Philadelphia and Reading Coal and Iron Company on coal shipped by it to New York Harbor from the collieries?

A. On prepared sizes, $1.95 per ton.

Q. What is the rate to Port Reading? 98

A. The rate to Port Reading is $1.95.

Q. How long has it been paying that rate?

A. For a number of years to my knowledge.

Q. Give us, so far as you can remember it, since 1900.

A. Yes, sir.

Q. Is not the rate which you have given, $1.95, to New York, what is called alongside the wharves?

A. Yes, sir; f. o. b. alongside at Port Reading. From the harbor vessels alongside at Port Reading.

Q. Do you pay the same rate of freight on coal shipped to Port Reading, New York Harbor, upon the coals taken from all the collieries which are operated by the Philadelphia and Reading Coal and Iron Company?

A. Yes, sir.

Q. Do you pay the same rate of freight upon all coal purchased by the Philadelphia and Reading Coal and Iron Company?

A. Yes, sir.

Q. And shipped to Port Reading?

A. Yes, sir; that is a published tariff rate.

Q. And applies to all collieries from which the Philadelphia and Reading Coal and Iron Company either purchases coal or from which it mines coal itself?

A. Yes, sir.

Q. Does the Philadelphia and Reading Coal and Iron Company
99 ship coals to New York Harbor over the lines of any other railroad except the Philadelphia and Reading Railway Company's?

A. No, sir.

Q. Does it ship any coal to any point except over the lines of the Philadelphia and Reading Railway Company?

A. It ships coal to all points. It ships coal to connecting roads; interchanges coal at various junction points with other roads.

Q. But all the coal starts over the lines of the Philadelphia and Reading Railway Company?

A. Yes, sir.

Q. What rate of freight does the Philadelphia and Reading Coal and Iron Company pay on coal shipped to Philadelphia?

A. I am giving this from general information. Of course, I have nothing to do with the freight rates. The freight is $1.90 on coal to Philadelphia.

By Judge CAMPBELL:

Q. You are referring to prepared sizes?

A. Prepared sizes in all cases.

By Mr. MCREYNOLDS:

Q. Is the coal that is shipped by the Philadelphia and Reading Coal and Iron Company to tide water, New York Harbor, shipped on through bills of lading to Port Reading?

100 A. I believe it is.

Q. How are settlements made between the Philadelphia and Reading Coal and Iron Company and the Philadelphia and Reading Railway Company for coal shipped by the former company over the lines of the latter?

A. The Philadelphia and Reading Railway Company renders the Philadelphia and Reading Coal and Iron Company a bill.

Q. How often?

A. Weekly; weekly bills.

Q. Do checks pass between the companies?

A. Do we pay our bills by checks, do you mean?

Q. You say the Philadelphia and Reading Railway Company renders a weekly bill for freight?

A. Yes, sir.

Q. How is the bill settled?

A. We pay those freight bills monthly or on account.

Q. Do you credit them on your books, or do you send them a check?

A. We credit them on our books.

Q. So the Philadelphia and Reading Railway Company renders a weekly bill to the Philadelphia and Reading Coal and Iron Company, and the amount of those bills is credited to the railway company on the books of the coal company?

A. Yes, sir.

Q. When are final settlements made, if ever?

A. They are made almost every month. At the close of each month we settle up and pay the Philadelphia and Reading Railway Company in cash. Not invariably at the end of each month, but 101
that is when the bills are due and should be paid. Sometimes we pay them in thirty days afterwards. Sometimes sixty days.

Q. And sometimes longer still?

A. We rarely get over ninety days behind.

Q. When you pay them how do you pay them?

A. By check.

Q. Drawn on the account of the coal company?

A. Yes, sir; drawn on the banks in which the coal company has its deposit, and the check is paid to the order of the Philadelphia and Reading Railway Company.

Q. How much money every year does the Philadelphia and Reading Railway Company advance to the Philadelphia and Reading Coal and Iron Company?

A. Nothing.

Q. When did it cease to?

A. Subsequent to 1896.

Q. How long subsequent?

A. For six or seven years there have been no advances made by the Philadelphia and Reading Railway Company.

Q. Then subsequent to 1896 up to, say, 1902 the Philadelphia and Reading Railway Company did make advances every year to the Philadelphia and Reading Coal and Iron Company, did it not? 102

A. The Philadelphia and Reading Railway Company made no advances whatever. Whatever advances were made were made by the Reading Company since 1896.

Q. And not by the Reading Railway Company?

A. And not by the Reading Railway Company.

Q. Prior to 1896 was it the custom of the Philadelphia and Reading Railroad Company to make advances to the Philadelphia and Reading Coal and Iron Company?

A. I will not say that it was the custom. I have only been the secretary of the Coal and Iron Company since 1898.

Q. Were you connected with the Coal and Iron Company prior to 1896?

A. No, sir; not prior to 1898.

Q. Have you any control over the sales of coals by the coal company?

A. No, sir.

Q. What are your general duties as secretary?

A. To keep a record of the minutes of the meetings of the board, keep a statement of the books and accounts of the company, and I am the accounting officer.

Q. What is the capital stock of the Philadelphia and Reading Coal and Iron Company?

A. Eight millions of dollars.

Q. What is its bonded indebtedness?

A. It has no bonded indebtedness except one collateral trust loan of about a million two hundred and thirty thousand dollars, I think.

103 Q. What is its floating debt?

A. It has no floating debt.

Q. How is the account between it and the Reading Company carried? How do you carry it on your books? It owes the Reading Company a large amount of money, does it not?

A. Yes, sir; it owes the Reading Company about eighty millions of dollars.

Q. How is that carried on your books?

A. Ledger account—credit account.

Q. Open account?

A. Open account on the ledger; yes, sir.

Q. Has that account increased or decreased?

A. It has been decreasing.

Q. The Philadelphia and Reading Coal and Iron Company buys a large amount of coal from sundry producers, upon what are known as 65 per cent contracts, does it not?

A. Yes, sir.

Q. Do you know about how much that amounts to annually?

A. The amount of money or the amount of tons?

Q. The amount of tons.

A. About a million two hundred thousand tons.

Q. Do you keep on the books of the Philadelphia and Reading Coal and Iron Company a separate account with that coal?

A. We keep a separate account of the amount of coal we purchase from each individual, and pay for that regularly during the succeeding months.

Q. You keep a separate account showing the disposition of that 104
purchased coal?

A. No, sir.

Q. Is there anything on your books to show the result of those transactions of purchase to the company?

A. Nothing on the books of the company; no, sir.

Q. Your books do not show, then, whether these purchases make you a profit or a loss?

A. We keep a record of the kinds and sizes of this coal that we purchase, and we also keep a record of the sales of all coal.

Q. Of that particular coal?

A. All the coal that is sold direct; we keep an account of the sales. All that is not sold during the month, which goes to our different stock points, there is a record of.

Q. Is there anywhere on your books the information which would enable you to determine the result of these 65 per cent contracts to your company?

A. I make statements up that show—all the purchased coal that we do not sell during the month we consider as sold. I make a statement up on that basis, and making it up on that basis, we make a profit on the purchased coal.

Q. Do you make a profit on the purchased coal which you send to New York Harbor?

A. On our total purchased coal? I could not say with regard to New York Harbor particularly. On our total purchased coal we 105
make a profit.

Q. On the part you send to New York Harbor, what is the result?

A. I never kept a record of that which we sent to New York Harbor.

Q. You are unable to say?

A. I am unable to say.

Cross-examination by Judge CAMPBELL:

Q. You say that your official connection with the Philadelphia and Reading Coal and Iron Company does not go back of the year 1898?

A. 1898; yes, sir.

Q. Prior to December, 1896, you were in the service of the receivers of the Philadelphia and Reading Coal and Iron Company and the Philadelphia and Reading Railroad Company?

A. Yes, sir.

Q. Those receivers were appointed under the decree of this court in February, 1893. Do you recall that?

A. Yes, sir.

Q. They continued in the conduct and operation of the business under the orders and direction of this court, both companies, from 1893 to 1896, inclusive?

A. Yes, sir.

Q. Up to the 1st day of December, 1896?

106 A. Yes, sir.

Q. So that whatever may have been the relations between the two companies, or the records of the two companies, were the operations of the officers of this court—that is to say, the receivers?

A. Yes, sir.

Q. You have stated in answer to the gentlemen that the Coal and Iron Company has no funded or bonded debt, with a small exception, which you referred to. State whether or not the Philadelphia and Reading Coal and Iron Company is a joint obligor in the issue of the so-called general-mortgage Reading bonds.

A. They are.

Q. Although those obligations are not carried on the books of your company as its funded debt or obligation?

A. Yes, sir.

Q. With respect to the operations of your coal purchases, while you say the books themselves—that is to say, the formal entries on your books of account—do not immediately and directly show the result of the operations, I understand you to have stated that you keep up a continual analysis of the course of that business by memoranda and statements prepared from time to time, which show the results of all these operations to be that they have been profitable?

A. Yes, sir.

Q. These statements are prepared in your department for exhibition to the management from time to time for their information?

107 A. Yes, sir.

Q. And while they are not in form of ledger-book entries they are among the records of the papers of the company?

A. Yes, sir.

Redirect examination by Mr. McReynolds:

Q. You said a while ago that the Philadelphia and Reading Coal and Iron Company were joint obligors upon the general-mortgage bonds of the Reading Company?

A. Yes, sir.

Q. Do you know whether the Philadelphia and Reading Railway Company is also a joint obligor upon those same bonds?

A. No, sir; they are not.

By Judge CAMPBELL:

Q. In your reference to the tariff rates on coal f. o. b. you stated the tariff rate is $1.95 f. o. b. New York Harbor. Is it not a fact that by the application of a reduction of that rate the tariff rate is, in fact, $1.55 and not $1.95?

A. $1.55 would be the net tariff rate.

By Mr. MCREYNOLDS:

Q. What do you mean by the application of a reduction in the rate?

A. Allowance for discharging and other expenses in connection.

Q. Allowances to whom?

A. To the shipper.

Q. What do you mean by allowances for discharging and other 108
expenses?

A. It is printed in the regular tariff rate.

Q. Is that all specified in the printed published rate?

A. Yes, sir.

Q. So that the net rate to the shipper is what?

A. $1.55 on prepared sizes.

Q. Who else ships coal from the Schuylkill region to New York Harbor over the lines of the Philadelphia and Reading Railway Company except the Philadelphia and Reading Coal and Iron Company?

A. Sundry individual shippers.

Q. Which is the largest shipper?

A. I could not say. I am not familiar enough with that to say.

Q. Who are among the largest shippers?

A. I could not say. I do not know who are among the largest shippers.

Q. Is there anybody who ships as much as half a million tons from that region?

A. I think not.

Q. Is there anybody who ships as much as 100,000 tons from that region?

A. I am not familiar enough to say. Our coal-sales department could tell you.

By Judge CAMPBELL:

Q. You have no official or other connection or relations with those 109
independent shippers?

A. None whatever.

Q. You have no means of knowing the details of their business or any part of it?

A. No, sir.

Q. Or of the shipments made by them over the railway company?
A. No, sir.
Q. That is not in your charge?
A. No, sir. I have no familiarity with it at all.

Also testimony of William J. Richards, contained in volume 4, pages 682 to 685, inclusive, and pages 704 and 705, as follows:

WILLIAM J. RICHARDS, a witness called on behalf of the Philadelphia and Reading Coal and Iron Company, having been duly sworn, was examined and testified as follows:

By Judge CAMPBELL:

Q. What is your profession?
A. Mining engineer.
Q. Kindly give a brief general outline of your experience as a mining engineer.

110 A. I went with the Reading Coal and Iron Company in their engineering department in 1882. I remained with them in that department until 1887. I was then one year with the Susquehanna Coal Company at Shamokin. In 1888 I returned to the Reading Coal and Iron Company and was with them until 1889 at Ashland, Schuylkill County. Then I went with the Lehigh and Wilkes-Barre Coal Company as mining engineer, and was with them until 1898 as mining and chief engineer. In 1898 I was made general superintendent of the Lehigh and Wilkes-Barre Coal Company, and held that position until 1903. In 1903 I became general manager of the Philadelphia and Reading Coal and Iron Company in charge of the mining department. In 1904 I was made second vice president, and in 1907 I was made first vice president of the Reading Coal and Iron Company.

Q. In charge in each instance of the mining department?
A. Yes, sir; of the mining.
Q. Kindly give a brief general description of the several anthracite fields which have come under your observation and their special characteristics.
A. I made a statement covering briefly my ideas on that. Shall I read that?
Q. I will ask you a few preliminary questions. I wish to call your attention to that Ruley map, which has been offered in evidence. You are familiar with it?
A. Yes, sir.

111 Q. I understand this map to have been prepared under the direction of the Geological Survey?
A. The Pennsylvania State Geological Survey.

Q. The nomenclature describing the various divisions differs somewhat from our trade names, does it not?

A. Yes, sir. Generally under the geological survey the fields are known as the northern, eastern and western middle, and southern; whereas we know it generally in the trade as the Wyoming, the Lehigh, and the Schuylkill.

Q. The Wyoming field, I take it, includes the northern field, so-called?

A. The Wyoming includes the northern field.

Q. Which is in Luzerne and Lackawanna Counties?

A. Luzerne and Lackawanna Counties.

Q. The Lehigh field, as you know it in the trade, consists of what?

A. The Lehigh field consists of the territory adjacent to Hazleton.

Q. Apparently in the middle on the face of the map?

A. Yes, sir. It is composed of a number of small basins there, and generally the eastern end of the extreme southern field is classified with the Lehigh region.

Q. That part lying east of the Little Schuylkill River, I take it, the Panther Creek region, and so forth?

A. Yes, sir.

Q. Which is an extension of the Schuylkill field? 112

A. Yes, sir.

Q. I mean geographically, not geologically altogether.

A. Yes.

Q. The regions in the northern part of Schuylkill County extending northwestward to Northumberland shown on this map are marked on the map as the "western middle" and "eastern middle?"

A. Yes, sir.

Q. Now, you may proceed, if you please, to place in the record such parts of the statement you say you have prepared as will express your understanding, possibly subject to some interruption to inquire for elaboration and detail.

A. I have some remarks on the different fields. Do you want me to read that?

Q. Yes. I just simply wanted you to explain the difference of the terminology employed by the different witnesses.

A. The region producing anthracite coal has a total area of about four hundred and eighty-four square miles. It is divided geologically and geographically into three fields. The first is known as the northern or Wyoming field. The Wyoming is a basin about sixty miles long and about six miles wide at its greatest distance across. The principal companies operating within it are the Delaware, Lackawanna and Western, Delaware and Hudson, Pennsylvania Coal Company, Lehigh and Wilkes-Barre Coal Company, Lehigh Valley, 113
and the Ontario and Western. Here the coal at the deepest point in

the basin reaches a distance of two thousand three hundred feet below the surface. The second field or subdivision is the Lehigh. It is made up of a number of small basins of not very great depth. The measures are of varying inclinations, running from nearly flat to very steep pitches. The third field or subdivision is called the Southern or Schuylkill. The Schuylkill starts near Mauch Chunk on the east.

Q. That is on the Lehigh River?

A. Yes, sir. The Schuylkill starts near Mauch Chunk on the east and is very much in the shape of the letter A, with Mauch Chunk at the apex and Treverton and Lykens at the end of either leg. The southern field contains the greatest variety of coal, greater probably than all the other fields combined. It is from this field that the Lykens coals come. That coal is produced on the western end of the Schuylkill field and is a coal that is not bright but dull in luster, and is a product of the veins lying geologically lowest in the whole series. That is, this Lykens coal is produced from those veins that are the lowest in the series. In what we call the Lykens region there are four veins producing this coal. The Lorberry, Schuylkill red ash, free and hard white ash, Locust Mountain, Shamokin, and Franklin coals are all produced in this region.

* * * * * * *

114 Cross-examination by Mr. McReynolds:

Q. What is the relative cost of the production of anthracite coals in the Schuylkill region as compared with the cost of production in the Lehigh region and the Wyoming region?

A. I would not have that.

Q. You may not be able to give it to us in definite figures, but relatively which is the highest of those regions?

A. The Schuylkill region is the highest. The average of the Schuylkill would be higher than the average of the others. Of course, that is only a matter of opinion; I am not giving that as a fact.

Q. You were once connected with the Lehigh and Wilkes-Barre Coal Company?

A. Yes, sir.

Q. You are acquainted with the cost of production there?

A. Yes, sir.

Q. The mines of that company are situated in the Lehigh region?

A. There are some collieries in the Lehigh region and the balance in the Wyoming.

Q. How about the relative cost of the mines of that company, located in the Lehigh region, and the mines located in the Schuylkill region, in the cost of production?

A. I would just state that I left there about the time that these big advances in wages were taking place. 115

Q. It is the general understanding in the trade, is it not, that the Schuylkill region is the most expensive region for mining?

A. Yes, sir; but I want to give that, qualifying it, of course, as just an opinion.

Q. When you first became connected with the Philadelphia and Reading Coal and Iron Company, the sizes below pea were waste products, were they not?

A. They were shipping some buckwheat in 1882.

Q. But very little?

A. I hardly remember just exactly what they were shipping, but I do not think they were wasting very much of the buckwheat at that time.

Q. Much of the coal that is now marketable and a valuable product was then a by-product and thrown out on the culm banks, was it not?

A. Only the very small sizes.

Q. What proportion was that of the total production, do you think?

A. I should say that probably 10 per cent of what we are shipping now was then wasted.

Q. You were connected with the Lehigh and Wilkes-Barre Coal Company from 1898 to 1903?

A. 1889.

Q. 1889 to 1903?

A. Yes.

Q. At that time the coal company was owned by the New Jersey 116
Central Railroad Company?

A. No, sir; it was a separate company.

Q. But its stock was owned by the New Jersey Central Railroad Company?

A. I do not know anything about the stock.

Q. Over what lines were its coals shipped to market?

A. Over the Jersey Central.

Q. Where did they go?

A. Where did the coal go?

Q. Yes.

A. It was distributed all over the line and went down to tide.

Q. At New York?

A. Yes.

Q. Did you have to do with the selling of the coal?

A. No, sir.

Q. How were the coals sold?

A. I do not know anything about that. All I had to do with was putting the coal on the cars.

Q. Did they have an agency in New York———

A. Yes, sir.

Q. And in other States outside of Pennsylvania, for the selling of their coal?

A. They had an agency in New York.

117 Q. Were the coals shipped upon orders from New York and other points outside?

A. That I had nothing to do with.

Q. But I am asking, did you not putthem on cars?

A. Yes, sir.

Q. Did you have nothing to do with shipping them?

A. We got our orders from New York and our shipper shipped them.

Q. So the coals were put on the cars by you and moved to New York upon orders from your New York selling agency?

118 A. Yes, sir.

As to all the foregoing offers of testimony the original reservation suggested when the testimony of W. A. Lathrop was offered applies as to all the defendants.

Government's counsel also read in evidence portion of the testimony of Joseph S. Harris, now deceased, a witness in the old Reading case.

Defendants object to the admission of this testimony on the ground that the issues in the former case and incident case are not identical, and that the parties in the former case and the incident case are not identical, and on the further ground that the testimony of Mr. Harris was discredited in the former case by the court, as will appear in 183 Federal Reporter.

It is understood this objection applies to all of the defendants.

Government's counsel read the following extracts: Volume 2, pages 7, 17 to 19 inclusive, pages 35 and 36, and page 258:

JOSEPH S. HARRIS, a witness for the plaintiff, having been duly sworn, was examined, as follows:

Direct examination by Mr. MCREYNOLDS:

Q. State your age, residence, and connection with any one of the defendants.

A. My age is 72 years, my residence is Germantown, Philadelphia.

119 I have no connection with any of the defendants, except that I am a director of some of the companies. I am a director of the Philadelphia and Reading Railway Company, the Central Railroad of New Jersey, the Lehigh and Wilkes-Barre, the New York Coal Navigation Company, and a number of smaller and unimportant companies.

Q. Are you connected with the Lehigh Valley Railroad Company?

A. No, sir.

Q. Are you director in the Reading Company, the Philadelphia and Reading Railway Company, and the Philadelphia and Reading Coal and Iron Company, all three?

A. Yes, sir.

Q. When did you first become connected with the Philadelphia and Reading Railroad Company?

A. With the Philadelphia and Reading Railroad Company in 1893.

Q. In what capacity did you become connected with the Philadelphia and Reading Railroad Company at that time?

A. I was one of the receivers. I was managing receiver, and I was the president.

Q. How long did you continue to be president of the Philadelphia and Reading Railroad Company?

A. About 8 years.

Q. When did you retire from that position?

A. In March, I believe, 1901.

Q. I understand you became the president of the Philadelphia and Reading Railroad Company in 1893 and continued as president of it and its successor until 1901?

A. I did; yes, sir. 120

Q. What connection have you ever had with the Philadelphia and Reading Coal and Iron Company?

A. I was an officer of the Philadelphia and Reading Coal and Iron Company in the close of 1870, and continued in that connection—one of the engineers of the company—superintending engineer until 1877. Then I was a vice-president of the company in 1892, and I was a receiver and president of the company from 1893 to 1901.

Q. So in some capacity or other you have been connected with the Philadelphia and Reading Coal and Iron Company since the latter part of the seventies?

A. No; I was from 1877 to 1890 not connected with it at all; I was out of the service.

Q. In what service were you from 1879 to 1890?

A. I was in the service of the Central Railroad Company of New Jersey and the Lehigh Coal and Navigation Company.

* * * * * * *

Q. During the time that you were president of the Philadelphia and Reading Railroad Company, from 1893 to 1901, what were the competitive roads in the coal trade with which you came in competition?

A. We came in competition with all the roads that were carrying coal from Pennsylvania.

Q. Name the principal ones in reference to carrying coal from the 121 coal mines to the New York Harbor.

A. The Reading, the Lehigh Valley, the Central Railroad of New Jersey, the Delaware, Lackawanna and Western, the Erie, and the Pennsylvania Railroad.

Q. What determined the freight rates during that time which you put into effect over the Philadelphia and Reading Railway Company?

A. So far as I know, in our company they were determined by the company.

Q. Of course they were fixed by your board of directors, or by yourself; but what were the conditions which required you to arrive at one figure or another; what were the things which influenced you?

A. If there were ever any negotiations, they were there before my time.

Q. There was some reason, was there not, why you fixed the rate at $1.50 instead of $1.65? What were the reasons which influenced the company in fixing its rates?

A. The same thing as influenced it in fixing its freight rates on any other product.

Q. What are they?

A. What seems to be the proper charge for doing the business.

Q. What effect did the competition of these other roads have upon your rates?

A. I do not know that it had any effect. I do not think in my time the rates were ever changed.

122 Q. You had the same rate from 1893 to 1901?

A. I think so.

Q. Were the rates over the other roads the same?

A. I do not know.

Q. You advised yourself about the rates over your competitors' lines, did you not?

A. I do not know that I advised myself. I knew in general what they were.

Q. Your rates necessarily had to be governed more or less by the rates of your competitors, did they not?

A. Yes; we could not have charged very much greatly different from them. If we charged much less, we could have taken business away from them. If we had charged much more, our business would have dried up.

Q. In other words, the competitive conditions were such that you had to fix your rates at approximately what the others were?

A. Yes, sir.

Q. Just as in other cases between competing roads?

A. Yes, sir.

Q. In the years 1884, 1885, 1886, what was your position in relation to the Philadelphia and Reading Coal and Iron Company?

A. I had none.

Q. With what companies were you associated at that time?

A. I was president of the Lehigh Coal and Navigation Company.

Q. How long were you president of the Lehigh Coal and Navi- 123
gation Company?

A. From 1882 to 1893.

Q. What was the business of that company?

A. The mining of coal.

Q. Over what lines did it transport the output of its collieries?

A. Mostly over the New Jersey Central.

Q. To what points was it sent?

A. Mainly to Philadelphia and New York and territory contiguous.

Q. About how much coal was produced by the company at that time?

A. I should say roughly from eight hundred thousand to a million tons.

Q. How was its output divided between the Philadelphia and Reading Railroad Company and the New Jersey Central—what determined that division?

A. The Lehigh Coal and Navigation Company in its early history had built a railroad running from the Wyoming region to Phillipsburg, on the Delaware River, where it connected with the Jersey Central. It had leased that road to the Jersey Central, and its general arrangements were to send all the coal over the Jersey Central to New York. The coal that went to Philadelphia went over the Reading Railroad and the Belvidere branch of the Pennsylvania Railroad.

Q. The lease of that road contemplated the payment of a certain 124
per cent of the amount of freight that was sent over it, did it not?

A. Yes.

Q. Did the Philadelphia and Reading Railroad Company reach any of the collieries which were reached by the New Jersey Central system?

A. No; not any of the Lehigh Coal and Navigation Company's collieries. The Lehigh Coal and Navigation Company owned the roads that supplied its mines, and no other company went in there then, nor does any other go in now.

Q. Does the coal from those collieries come to New York now over the New Jersey Central Railroad?

A. Yes, sir.

Q. Who owned the capital stock of the Lehigh Coal and Navigation Company while you were its president?

A. Individuals.

Q. It was not owned by any railroad company or any other coal company?

A. No, sir.

Q. It was an independent in the field?

A. Yes.

Q. Did it have a selling agency of its own?

A. Yes.

Q. Did it have agents in New York?

A. Yes, sir.

125 Q. How were the prices of its coal fixed in New York?

A. Fixed by orders to the selling agents at which they should sell.

Q. Who were your competitors in this market?

A. All the people who came to the market.

Q. Do you mean all the coal companies who were mining in all these three separate fields in Pennsylvania?

A. Yes; generally that is true. Yes.

* * * * * * *

Q. In 1901 the Philadelphia and Reading Railway was operating a system which led from the coal fields in Pennsylvania to New York Harbor at Port Reading?

A. Yes, sir.

Q. And the Central Railroad of New Jersey was also operating a road which led from the same coal fields to Jersey City on New York Harbor, was it not?

A. Not from the same coal fields. The two did not carry the same coal.

Q. That was not what I asked you. I said from the same coal field. They both reached the middle coal field, did they not?

A. No; the Reading did not reach the middle coal field.

Q. Did the New Jersey Central reach the southern coal field?

A. It reached the eastern end of it; it reached the Lehigh Coal and Navigation Company's properties.

126 Q. To that extent at least they both reached the same coal field or region?

A. The territories of the two were not the same at all.

Q. You mean they were not identical, but did not the Reading reach the eastern part of the middle coal field?

A. No; it did not reach the Lehigh Coal and Navigation Company's property at all.

Q. Did not the Reading reach the middle field?

A. No, sir; it did not reach the middle field at all.

Q. It did not reach anything but the southern field?

A. No.

Q. But the Jersey Central reached the middle field?

A. Yes; and the eastern end of the southern field.

Q. So the Jersey Central and the Reading both reached the southern field?

A. Yes; they both reached the southern field.

Q. And both carried from that field over their own tracks anthracite coal to tidewater on New York Harbor?

A. Yes.

Q. And had been doing that thing for many years?

A. Yes.

Q. Both had termini upon the waters of the New York Harbor?

A. Yes.

Q. They both also were interested in coal-mining companies, were they not?

A. No; the Jersey Central was not interested in coal-mining companies. It was interested in coal mining. 127

Q. Did not the Jersey Central at that time own the Lehigh and Wilkes-Barre Coal Company?

A. Yes.

Q. Was not the Lehigh and Wilkes-Barre Company a mining company?

A. Yes, sir.

Q. Shipping over the New Jersey Central?

A. Yes, sir.

Q. And selling at New York Harbor?

A. Yes, sir.

Q. Was not the Philadelphia and Reading Coal and Iron Company mining coal and shipping it over the Philadelphia and Reading Railroad Company to New York and selling it there?

A. Yes, sir.

Q. At this time, in 1901, the Reading Company purchased in some way, the details of which you do not know, a majority of the stock of the Central Railroad Company of New Jersey?

A. Yes, sir.

Q. You say that was done for the purpose of consolidating their interests and bringing them into nearer and closer harmony?

A. I said it was done to cement the company's interests and give them a permanent outlet on the New York Harbor.

Q. Did not the Philadelphia and Reading Railroad Company have an outlet on New York Harbor for its coal long before that? 128

A. Not a satisfactory one. It was not as good as the one at Jersey City.

Q. Is not the Philadelphia and Reading Railway Company now using its Port Reading tracks for the shipping of coal?

A. Yes, sir.

Q. Has it not always used them since that road was built down from Bound Brook, N. J.?

A. Yes, sir.

Q. It had that road from Bound Brook, N. J., at the time they bought this majority of stock of the New Jersey Central, did it not?

A. Yes.

Q. And had been using it for years, had it not?

A. Several years; yes.

Q. Do you know what the Reading Company paid for that majority of stock in the New Jersey Central, how much per share?

A. No; I can not say from memory.

Q. Do you know how it was paid for? I want to know whether the Reading Company issued to the holders of that stock the securities of the Reading Company or whether it paid cash for them?

A. It made an issue of bonds. I do not know how the stockholders were paid. I know that the Reading Company made an issue of bonds to cover that; but how the stockholders were protected I do not know.

129 Q. But you do know the Reading Company made an issue of bonds and hypothecated this stock of the New Jersey Central Railroad Company to secure those bonds?

A. Yes, sir.

Q. And in that way, without going into the details of how the transaction was actually worked out, it paid for the stock of the New Jersey Central Railroad Company?

A. Yes.

Q. Who was the financial representative of the Reading Company in these transactions?

A. I do not know exactly what your question refers to.

Q. Did you not have a banker or some financial representative in New York who was managing it?

A. Yes, sir. Our banker here was J. P. Morgan & Co.

JOSEPH S. HARRIS, a witness for the plaintiff, recalled.

* * * * * * *

Direct examination by Mr. MCREYNOLDS:

Q. You told us when on the stand heretofore that you were once the president of the Lehigh Coal and Navigation Company?

A. I was.

Q. During what years were you the president of that company?

A. From 1882 to 1893.

130 Q. Did the Lehigh Coal and Navigation Company own and operate the Panther Creek Railroad Company during those years?

A. The Lehigh Coal and Navigation Company does own the Panther Creek Railroad. It uses it for carrying its coal from its mines to its breaker, and for transporting it to a point at which it delivers it to the Jersey Central. The Jersey Central operated the road for passengers and freight. The Lehigh Coal and Navigation Company only use it to assemble its coal.

Q. Was the Lehigh Coal and Navigation Company the owner of this Panther Creek road during the years from 1882 to 1893?

A. Yes, sir.

Q. And operated it during those years for the purpose of assembling its coal?

A. Yes, sir.

Q. Where did the Panther Creek road during those years connect with the Reading system?

A. At Tamaqua.

Q. Did the Lehigh Coal and Navigation Company sell coal in Philadelphia during the years 1882 to 1893?

A. Yes, sir.

Q. How were the coals that were sent to Philadelphia shipped?

A. They mostly went down the Lehigh and Susquehanna Railroad to Bethlehem, and from there down the North Pennsylvania Railroad.

Q. Is that part of the Reading system?

A. The North Pennsylvania Railroad is.

Q. Were those coals carried by the Panther Creek Railroad over to Tamaqua?

A. No, sir; the coal that was delivered to the railroad companies for transportation was all delivered at Hauto, which is a point on 131
the Panther Creek road. Hauto is the junction with the Jersey Central Railroad.

Q. At what point were the coals of the Lehigh Coal and Navigation Company, which came to Philadelphia, delivered to the Philadelphia and Reading Railway Company?

A. There was a little coal delivered to the Philadelphia and Reading. It was sent down the Jersey Central, because we were interested in the earnings of the Jersey Central.

Q. It was entirely possible to deliver those coals at Tamaqua to the Philadelphia and Reading, was it not?

A. Yes, sir; it was.

Q. The Lehigh Coal and Navigation Company owned a canal coming down in the general direction of Philadelphia, did it not?

A. Yes, sir.

Q. During the years you were president of the company some coal came to Philadelphia market over that canal?

A. It did. There was also some coal shipped from Phillipsburg by the Belvidere and Delaware, which was one of the Pennsylvania's lines, to Philadelphia.

Government's counsel also read in evidence from the record of the 132
old Reading case the following extracts from the report of the Philadelphia and Reading Railroad Company, dated November 30, 1890,

being from pages 17 and 18 of such report, and contained in volume 2 of the old record at pages 563 and 564:

"PORT READING RAILROAD.

(Pages 17 and 18:) "In another part of this report the lack of means of placing the product of your mines upon the markets and the consequent shrinkage of production in proportion to that of competing fields is commented on. A marked illustration of the necessity of providing additional facilities for the distributing of anthracite coal in New York Harbor and all tidewater points tributary thereto is found in the fact that at the time of writing this report there are more than 1,000 cars loaded with coal standing on the side tracks in Jersey City because of the lack of dock facilities for transferring the coal to vessels; and on account of the restrictions which these limitations impose upon your traffic the management is now obliged to transport coal from Port Richmond through the Delaware River and around to New York Harbor, encountering all the perils of coast navigation at this season of the year, and at an expense largely in excess of all-rail freights. With the view of meeting these wants and other disabilities
133 under which your company has labored ever since the day it opened its mines, for want of unrestricted access to the waters of New York Bay, the greatest distributing center in the country of anthracite coal, your board has determined to promote the construction of a line of road, to be under the control of your company, to extend from the vicinity of the terminus of the Delaware and Bound Brook Railroad, near Bound Brook, N. J., to deep water, in the Arthur Kill, a distance of 20 miles, at a point readily accessible to the waters of New York Bay and New England ports by large vessels. Plans have been completed for the construction of this line, with adequate terminals for the storage and shipment of coal in quantities limited only by the demands of the markets. Over 300 acres of land have been acquired for terminal purposes bordering on the waters of the Arthur Kill. Work will be speedily commenced, and prosecuted with vigor. Conservative estimates show that the earnings of this line will be sufficient to meet all charges on its cost and leave a large surplus; it will furnish the means of supplying the markets with your just proportion of the coal tonnage at all times. The advantage of the construction of this line in the increase of tonnage on nearly all other parts of the system, without regarding the increase of product of the coal and iron company, can scarcely be estimated, but it is certain that it will add a large increase of traffic earnings. It was anticipated that work on this line could have been commenced before this time, but it was found necessary to make several surveys in order to avoid all grade crossings
134 of other railroads, and your board is pleased to announce that the line adopted is of favorable grades and of almost perfect alignment, the maximum grade being only 15 feet to the mile."

Government's counsel also read in evidence extracts from the report of the same company of November 30, 1891, being from pages

10 and 11 of such report, contained in volume 2 of the old record, pages 564 and 565:

"The experiences of the past year have emphasized the necessity for other means than those hitherto employed in the distribution of anthracite coal in New York Harbor and its tributary tidewater points. The early completion of the new line to Port Reading on the Arthur Kill will remove the limitations upon the growth and extension of this traffic in that quarter, from which the business has suffered in the past. The work is progressing rapidly and will be ready early in the year for operations long in advance of the season when the heaviest traffic is to be expected.

"During the year a new company has been organized under the name of the Tamaqua, Hazleton and Northern Railroad Company for the purpose of building a line from the Catawissa branch to the vicinity of Hazleton, connecting with the Delaware, Susquehanna and Schuylkill Railroad, with which traffic arrangements have been entered into by which we are guaranteed a minimum of 1,000,000 tons of anthracite coal. The new line has been completed and is now in operation."

Government's counsel also read in evidence extracts from the report 135
of the Philadelphia and Reading Coal and Iron Company of November 30, 1895, being from pages 14, 15, and 16 of such report, contained in volume 2, at page 566:

(Page 14:) "The most careful estimate that has been published accords to Reading interests the control of over 33 per cent of all the anthracite in Pennsylvania, and its claim to the possession of this proportion of the coal in the ground is generally conceded. At one time, in 1869 and in 1871, Reading mined and carried its full share of the total production, and so late as the year 1878 it had nearly 29 per cent (28.97). Since that time, while its production has grown steadily, it has increased much less rapidly than that of its competitors, the companies engaged in mining in the northern, or Wyoming, coal field, far outstripping it in the race for tonnage. This comparative retreat on the part of Reading has been partly due to its poverty, which made it difficult to raise the money required to develop its property, and partly to its conservative policy, which led it to be more interested in getting remunerative prices than in increasing its output."

(Pages 15 and 16:) "In February, 1892, the Reading Company leased the Lehigh Valley Railroad and the Central Railroad of New Jersey, and made at the same time an agreement to buy the coal of their allied coal companies—the Lehigh Valley Coal Company and 136
the Lehigh and Wilkesbarre Coal Company—and to pay these companies for their coal, delivered into cars at the mines, certain percentages of the prices that might from time to time be received for coal delivered at tidewater near New York. The tidewater price of coal being largely made up of the two factors, the price at mines and

the charge for transportation thence to tide, this agreement necessarily made the freight rate also a percentage of the price realized for the coal at tidewater, and in order that the leased railroads should earn the rentals which Reading had agreed to pay it was necessary that their allied coal companies should be allowed to mine freely, and that the coal should be sold at remunerative prices. In order to accomplish these two purposes, it was necessary to curtail the product of Reading's mines, lest there should be an oversupply of coal sent to market. It thus came to pass that in the year 1892 Reading's percentage of the total output fell to 19.55 per cent, and in 1893 to 19.35 per cent. The true cause of this falling off in the relative productiveness of Reading's collieries was not generally understood, but the fact led to general incredulity in regard to its capacity to maintain its place in the race for tonnage, and vigorous attempts were made to induce it to take a smaller percentage of the total anthracite business than it had ever carried."

137 Government's counsel also read extracts from the report of the Reading Company of June 30, 1901, being from page 13 of such report, volume 2, page 567 of the old record, as follows:

"CENTRAL RAILROAD COMPANY OF NEW JERSEY.

(Page 13:) "In January, 1901, Reading Company purchased 145,000 shares out of a total of 272,138 shares of the capital stock of the Central Railroad Company of New Jersey—the price paid being $160 per share. This sum was paid by the sale of 60,353 first preferred shares and 34,275 second preferred shares, and the issue of $23,000,000 4 per cent collateral trust bonds due in 1951 which were secured by the deposit of the 145,000 shares of the capital stock of the Central Railroad Company of New Jersey, 29,900 shares of the capital stock of the Perkiomen Railroad, and 4,400 shares of the capital stock of the Port Reading Railroad Company.

"The acquisition of the control of the Jersey Central is not only of enormous advantage because of the additional facilities given to the system, but through this acquisition the Reading system now owns and controls about 63 per cent of all the unmined anthracite coal in the State of Pennsylvania.

"On April 12, 1901, the president of the Reading system was elected president of the Central Railroad Company of New Jersey."

Government's counsel also read in evidence extracts from the report 138
of the Reading Company of June 30, 1906, being from page 35 of such report, contained in volume 2 of the old record, page 567, as follows:

[From Ninth Annual Report of Reading Company for fiscal year ended June 30, 1906, signed by George F. Baer, president (p. 35).]

Philadelphia and Reading Railway Company.—Income account for the year ended June 30, 1906, and comparison with year ended June 30, 1905.

	1905–1906		1904–1905	
Earnings:				
From coal traffic	$17,198,247.07		$17,163,351.47	
From merchandise traffic	15,220,440.96		13,036,535.55	
From passenger traffic	6,216,316.25		5,717,399.37	
From miscellaneous sources	902,241.36		796,458.53	
From transportation of mail	120,795.11		118,324.99	
		$39,658,040.75		$36,832,069.91
Operating expenses:				
For maintenance of way and structures	3,195,152.18		2,738,215.40	
For maintenance of equipment	6,330,881.62		5,650,984.25	
For conducting transportation	11,896,369.94		10,387,562.86	
For general expenses	714,767.98		703,587.10	
		22,137,171.72		19,480,349.61
		17,520,869.03		17,351,720.30
Other expenses:				139
For insurance fund			30,794.26	
For improvements	3,539,352.29		979,643.31	
		3,539,352.29		1,010,437.57
		13,981,516.74		16,341,282.73
Other sources (net earnings)		906,683.83		663,648.97
Net earnings		14,887,200.57		17,004,931.70
Fixed charges		9,502,728.96		9,645,769.48
Surplus		5,384,471.61		7,359,162.22

Government's counsel also read in evidence extracts from report of the Reading Company of June 30, 1908, being page 37 of such report, contained in volume 2, page 568, as follows:

[From Eleventh Annual Report of Reading Company for fiscal year ended June 30, 1908, signed by George F. Baer, president (p. 37).]

Philadelphia and Reading Railway Company.—Income account for the year ended June 30, 1908, and comparison with year ended June 30, 1907.

	1907–1908		1906–1907	
Earnings:				
From coal revenue	$18,577,272.11		$18,730,189.63	
From merchandise revenue	13,502,925.96		16,360,169.92	
From passenger revenue	6,211,933.58		6,399,172.94	
From mail revenue	117,801.32		120,537.44	
From excess baggage revenue	25,520.79			
From express revenue	607,407.69			
From milk revenue (on passenger trains)	213,286.68			
From other passenger-train revenue	87,414.76			
From switching revenue	208,145.05		1,066,208.54	
From special train revenue	10,429.55			
From miscellaneous transportation revenue	1,123.98			
From revenue from operations other than transportation	315,620.45			
		$39,878,881.92		$42,676,278.47
Other income:				
Hire of equipment	1,657,131.49			
Income from securities	194,060.40			
	1,851,191.89			
Less rentals	89,134.57			
		1,762,057.32		
		41,640,939.24		
Operating expenses:				
For maintenance of way and structures	3,803,045.97		3,606,192.34	
For maintenance of equipment	8,094,407.08		7,971,544.44	
For transportation expenses	12,437,316.51		13,138,259.86	
For traffic expenses	451,275.02		426,593.70	
For general expenses	672,251.48		746,740.96	
		25,458,296.06		25,889,331.30
		16,182,643.18		16,786,947.17
Other expenses:				
For additions and betterments		937,659.64		1,847,933.64
		15,244,983.54		14,939,013.53
Outside operations (net earnings)		1,023,656.10		852,657.97
Net earnings		16,268,639.64		15,791,671.50
Fixed charges		9,923,000.21		9,747,246.38
Surplus		6,345,639.43		6,044,425.12

Government's counsel also read in evidence from the old record 141
Government Exhibit 157, being the tabulation of future coal supplies, contained in volume 3 of the old record, at pages 328 and 329, together with the condensed tabulation thereof contained in volume 2 at page 537, accompanied further by a quotation referred to in such tabulation as requested by Mr. Reynolds.

The quotation suggested by Mr. Reynolds is from volume 2 of the record, page 535, from the testimony of William Griffith, who prepared Exhibit 157, and he makes in respect to that exhibit the following statement. Referring to the statement he says:

"The first column gives the names of the railroads whose subsidiary companies are in the coal business and shows the tonnage that those subsidiary companies own, or did own at that time, and also the tonnage that was shipped over these railroads by individuals, or others, who had tonnage contracts with the railroad.

"Q. Under 'tonnage owned,' do you include tonnage in lands which are held in fee, as well as lands which are held by lease?

"A. I mean what tonnage was owned. I do not mean necessarily that the land is owned. They secured this tonnage through owning the lands in fee or having leaseholds on those lands.

"Q. By 'tonnage controlled by contract' what did you mean?

"A. At that time the method of shipment by the individual opera- 142
tors was usually to contract their output to some one of the railroads. They made an agreement by which all their coal, or certain portions of it, should go to a certain railroad for a term of years. Therefore, this road controlled the tonnage from that colliery until the agreement expired."

It is further understood with counsel for the Government that it should appear that Exhibit 157 was a table published in a paper known as the "Bond Record," of the issue of June, 1896; that it consists of an estimate prepared for Harvey Fisk & Sons, of New York, by William Griffith, as of the year 1895, this appearing from the testimony of Mr. Griffith, as shown in the old record, volume 2, page 533.

Mr. Griffith was employed on an early geological survey of the State of Pennsylvania, and had under his charge the Wyoming region, the purpose of that being to make a report to the Commonwealth of Pennsylvania.

[Old Record: Government Exhibit No. 157.]

Tabulated estimate showing the approximate future supply of coal tonnage of the various railroads having access to the Pennsylvania anthracite coal fields.

Railroads.	Wyoming or northern region. Area, 176 square miles.		Lehigh region: Eastern middle field, and Panther Creek basin. Area, 45 square miles.		Schuylkill region. Western middle or Mahanoy-Shamokin field. Area, 94 square miles.		Schuylkill region. Southern or Pottsville field. Area, 109 square miles.		Totals. Area, 484 miles.			Tonnage shipments, 1895.	Duration based on 1895 tonnage shipments.
	Area of coal lands covering 4-foot beds.	Unmined tonnage.	Area of coal lands covering 3-foot beds.	Unmined tonnage.	Area of coal lands covering 3-foot beds.	Unmined tonnage.	Area of coal lands covering 3-foot beds.	Unmined tonnage.	Total area.	Contents, in foot-acres, unmined January 1, 1896. [a]	Total unmined tonnage, 650 tons per foot-acre. [b]		
Del., Lack. & West. R. R. Co.:													
Tonnage owned	16,229	300,853,150							16,229	462,851	300,853,150		
Tonnage by contract	6,519	31,478,850							6,519	48,429	31,478,850		
Total	22,748	332,332,000							22,748	511,280	332,332,000	6,129,260	54 yrs.
Del. & Hudson Canal Co.:													
Tonnage owned	16,578	115,823,200							16,578	178,188	115,823,200		
Tonnage by contract													
Total	16,578	115,823,200							16,578	178,188	115,823,200	4,347,843	26 yrs.
Erie & Wyom'g Val. R. R. Co.:													
Tonnage owned	11,643	94,876,600							11,643	145,964	94,876,600		
Tonnage by contract													
Total	11,643	94,876,600							11,643	145,964	94,876,600	1,746,832	54 yrs.
Erie Railroad Co.:													
Tonnage owned	5,998	34,718,100							5,998	53,414	34,718,100		
Tonnage by contract	1,745	4,161,300							1,745	6,402	4,161,300		
Total	7,743	38,879,400							7,743	59,816	38,879,400	1,820,038	21 yrs.
N. Y., Ont. & West R. R. Co.:													
Tonnage owned													
Tonnage by contract	3,664	13,971,100							3,664	21,494	13,971,100		
Total	3,664	13,971,100							3,664	21,494	13,971,100	1,424,407	9 yrs.

NOTE.—The figures in this column have been changed to include the probable surplus tonnage due to strippings.

									3,004	21,494	13,971,100	1,424,407	9 yrs.
N. Y., Susq. & West. R. R. Co.:													
Tonnage owned	2,020	13,551,850							2,020	20,849	13,551,850		
Tonnage by contract	4,182	13,338,650							4,182	20,521	13,338,650		
Total	6,202	26,890,500							6,202	41,370	26,890,500	1,492,244	18 yrs.
Del., Susq. & Sch'kill R. R. Co.:													
Tonnage owned			6,822	67,361,334					6,822	15,632	67,361,334		
Tonnage by contract			486	2,539,866					486	3,908	2,539,866		
Total			7,308	69,901,200					7,308	107,540	69,901,200	1,905,784	35 yrs.
Pennsylvania R. R. Co.:													
Tonnage owned	4,514	86,062,600			6,645	113,233,900	5,415	48,845,550	16,574	381,757	248,142,050		
Tonnage by contract	750	15,283,450	200	1,100,000	696	21,165,300	1,340	30,811,950	2,986	105,170	68,360,700		
Total	5,264	101,346,050	200	1,100,000	7,341	134,399,200	6,755	79,657,500	19,560	486,927	316,502,750	5,025,645	63 yrs.
Cent. R. R. Co. of New Jersey:													
Tonnage owned	12,378	342,660,500	9,335	351,018,900			4,709	170,080,950	26,422	1,328,862	863,760,350		
Tonnage by contract	865	5,040,750	1,426	8,768,600					2,291	21,245	13,809,350		
Total	13,243	347,701,250	10,761	359,787,500			4,709	170,080,950	28,71 3	1,350,107	877,569,700	5,388,104	163 yrs.
Lehigh Valley R. R. Co.:													
Tonnage owned	9,969	161,212,350	4,052	43,693,000	13,768	244,015,850	8,014	338,279,500	35,803	1,211,078	787,200,700		
Tonnage by contract	2,147	18,187,650	4,775	50,123,400					6,922	105,094	68,311,050		
Total	12,116	179,400,000	8,827	93,816,400	13,768	244,015,850	8,014	338,279,500	42,725	1,316,172	855,511,750	7,360,454	116 yrs.
Philadel. & Reading R. R. Co.:													
Tonnage owned			541	2,135,900	31,406	645,589,100	57,530	1,439,765,600	89,477	3,211,524	2,087,490,600		
Tonnage by contract					2,040	15,709,200	1,052	40,506,700	3,092	86,486	56,215,900		
Total			541	2,135,900	33,446	661,298,300	58,582	1,480,272,300	92,569	3,298,010	2,143,706,500	9,905,039	216 yrs.
Total tonnage owned by railroads	79,329	1,149,758,350	20,750	464,209,134	51,819	1,002,838,850	75,668	1,996,971,600	227,566	7,098,120	4,613,777,934		
Total tonnage controlled by contracts	19,872	101,461,750	6,887	62,531,866	2,736	36,874,500	2,392	71,318,650	31,887	418,749	272,186,766		
Uncontrolled tonnage [c]	1,543	[d] 26,910,650					6,609	[e] 160,911,400	8,152	288,957	187,822,050		
Grand total	107,744	1,278,130,750	27,637	526,741, 0	54,555	1,039,713,350	84,669	2,229,201,650	267,605	7,805,826	5,073,786,750	46,545,670	109 yrs.

[a] A foot-acre is an acre of coal bed 1 foot thick. Two acres of a coal bed 10 feet thick would contain 20 foot-acres.
[b] Mr. Griffith's explanation of his estimate of 650 tons per foot-acre will be found on page 109, March issue of the Bond Record. (Editors.)
[c] This tonnage is contained in undeveloped lands in private hands, still subject to purchase or lease.
[d] The region containing major part of this tonnage is accessible by the Lehigh Valley, Delaware, Lackawanna & Western, Delaware & Hudson, Central of New Jersey, and New York, Susquehanna & Western, and remainder accessible also to the Erie & Wyoming Valley, Erie, Ontario & Western, and Pennsylvania Railroads.
[e] Region accessible by the Philadelphia & Reading, Lehigh Valley, Pennsylvania, and Central of New Jersey.

[Tabulation, from Old Record, Vol. 2, p. 537.]

145 "The following comparison of percentages of shipment, allotment, and tonnage reserve will also be interesting in this connection:

	Percentage of shipment, 1895.	Percentage of allotment, 1896.	Percentage of future supply controlled.
Delaware, Lackawanna and Western R. R. Co	13.16	13.35	6.55
Delaware and Hudson Canal Co	9.34	9.60	2.29
Erie and Wyoming Valley R. R. Co	3.75	4.00	1.62
Erie R. R. Co	3.91	4.00	.77
New York, Ontario and Western Ry. Co	3.06	3.10	.28
New York, Susquehanna and Western R. R. Co	3.02	3.20	.54
Delaware, Susquehanna and Schuylkill R. R. Co	4.11	3.50	1.38
Pennsylvania R. R. Co	10.59	11.40	6.24
Central R. R. of New Jersey	11.51	11.70	17.30
Lehigh Valley R. R	15.81	15.65	16.87
Philadelphia and Reading R. R. Co	21.47	20.50	42.25
Uncontrolled tonnage	.....	.....	3.71
Total (see diagram on p. 501)	.....	.....	100.00

"From this we see that the corporations named control, either directly or indirectly through their subcompanies, 96.29 per cent of the available tonnage of the future, and in about the following manner:

	Per cent.
They own by actual purchase or its equivalent	90.93
They control by long-term contracts, say about	3.36
They control by short-term contracts of various kinds, say	2.00
	96.29
Uncontrolled, i. e., remaining in private hands	3.71
Total	100.00

Government's counsel also read in evidence from the old record 146
Government's Exhibit No. 14, being a statement of tonnage shipped by various railroads, contained in volume 3, pages 48 to 54, inclusive, as follows:

[Old Record: Government Exhibit No. 14.] 147

Statement of shipments of anthracite coal carried by the initial transportation lines in the month of December, 1901, and in the calendar year 1901, compared with the corresponding periods last year.

NOTE.—This statement is prepared exclusively for the purposes of the officers of the transporting companies named, and is not for public information.

	Buckwheat No. 1, and larger sizes, December, 1901.	Sizes below buckwheat No. 1, December, 1901.	Total shipments, December, 1901.	Total shipments, December, 1900.	Difference.
Philadelphia and Reading Ry	650,800	39,900	690,700	1,068,520	a 377,820
Lehigh Valley R. R	483,477	39,643	523,120	760,166	a 237,046
Central Railroad of New Jersey	331,790	31,016	362,806	587,762	a 224,956
Delaware, Lackawanna and Western R. R	531,787	51,791	583,578	731,031	a 147,453
Delaware & Hudson Co	355,999	14,944	370,943	434,915	a 63,972
Pennsylvania R. R	372,883	19,880	392,763	521,111	a 128,348
Pennsylvania Coal Co. (Included in Erie R. R.)					
Erie R. R	367,680	50,969	418,049	600,996	a 182,947
New York, Ontario and Western Ry	162,646	41,987	204,633	212,563	a 7,930
Delaware, Susquehanna and Schuylkill R. R	73,982	2,879	76,861	158,125	a 81,264
New York, Susquehanna and Western R. R. (Included in Erie R. R.)					
Total	3,330,444	293,009	3,623,453	5,075,189	a 1,451,736

	Buckwheat No. 1, and larger sizes, year 1901.	Sizes below buckwheat No. 1, year 1901.	Total shipments, year 1901.	Total shipments, year 1900.	Difference.
Philadelphia and Reading Ry	10,460,444	510,563	10,971,007	9,338,516	b 1,632,491
Lehigh Valley R. R	7,821,127	489,216	8,310,343	6,909,442	b 1,400,901
Central Railroad of New Jersey	5,670,101	489,936	6,160,037	5,309,856	b 850,181
Delaware, Lackawanna and Western R. R	6,900,114	631,621	7,531,735	6,013,849	b 1,517,886
Delaware and Hudson Co	4,791,160	216,462	5,007,622	3,973,859	b 1,033,763
Pennsylvania R. R	5,326,699	320,426	5,647,125	5,169,947	b 477,178
Pennsylvania Coal Co. (Included in Erie R. R.)					
Erie R. R	5,194,892	646,701	5,841,593	5,165,070	b 676,523
New York, Ontario and Western Ry	2,166,704	341,573	2,508,277	1,658,457	b 849,820
Delaware, Susquehanna and Schuylkill R. R	1,532,294	58,568	1,590,862	1,568,488	b 22,374
New York, Susquehanna and Western R. R. (Included in Erie R. R.)					
Total	49,863,535	3,705,066	53,568,601	45,107,484	b 8,461,117

a Decrease. b Increase.

Coal on hand at tidewater shipping ports December 31, 1901, 415,757 tons; November 30, 1901, 604,334 tons; decrease, 188,577 tons; December 31, 1900, 264,511 tons; increase, 151,246 tons.

WM. W. RULEY, *Chief of Bureau.*

BUREAU OF ANTHRACITE COAL STATISTICS,
Philadelphia, January 8, 1902.

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extensive flooding of the collieries, and not by the inability of the collieries to produce the required amount of coal under ordinary circumstances, The Central Railroad Company of New Jersey shall for those years be relieved of its obligation to pay to The Lehigh Coal and Navigation Company the sum of money which The Lehigh Coal and Navigation Company would have received from the business of the said years if the guaranteed production of anthracite had been made; and The Central Railroad Company of New Jersey shall and will cause the production of the anthracite lands aforesaid to pass over the lines of the Lehigh and Susquehanna Railroad and branches to markets that can be reached by way of the said railroad lines, and as far as it can be carried toward such markets over said lines, from which lines it shall not be diverted except for an equivalent that shall be satisfactory to The Lehigh Coal and Navigation Company, and that shall have been accepted by them in writing before such diversion shall be made, The Lehigh Coal and Navigation Company agreeing on its part to consent to such diversion when it shall clearly appear that the interests of the Lehigh and Susquehanna Railroad and branches will be thereby promoted," and

Whereas it is important for the interests of both the parties hereto (as tending to secure enough business for the Lehigh and Susquehanna Railroad and branches to enable The Central Railroad Company of New Jersey to earn sufficient revenues on the Lehigh and Susquehanna Railroad and branches to pay the stipulated rental), that so much as possible of the coal product of The Lehigh Coal and Navigation Company's lands shall be sent to market over the lines of the Lehigh and Susquehanna Railroad and branches and the Central Railroad New Jersey, it is agreed between the parties hereto that the proviso in the first of the covenants of the party of the first part in the agreement of March 31, 1871, shall be changed so as to read as follows:

"*Provided*, That one-fourth and no more of the coal to be mined annually by The Lehigh Coal and Navigation Company from lands owned, leased, or controlled by it may be sent to market over railroad lines other than the Lehigh and Susquehanna Railroad and branches in case that by so doing The Lehigh Coal and Navigation Company can realize a larger price or profit than it would have realized from the price at the mines together with its proportion of the freight earnings on such coal on the Lehigh and Susquehanna Railroad and branches if it had been shipped over that railroad; but The Central Railroad Company of New Jersey shall have the option in such cases of buying such coal of The Lehigh Coal and Navigation Company at its mines, paying therefor a price which added to the proportion of the freight earnings on such coal accruing to The Lehigh Coal and Navigation

Company shall not be less than that which The Lehigh Coal and Navigation Company would have realized if its coal had been shipped over other lines of railroad. But nothing in this proviso shall be held to limit the shipment of coal by The Lehigh Coal and Navigation Company over the Lehigh and Hudson River Railway to points in the interior of New England, except that the amount of coal shipped by The Lehigh Coal and Navigation Company over the Lehigh and Hudson River Railway, added to the amount that may be sent to market by railroad lines other than the Lehigh and Susquehanna Railroad and branches, shall not in any year exceed twenty-five per cent of the total production of its mines," and

Whereas, it is important for the interests of both the parties hereto as tending to the development of the business of the Lehigh and Susquehanna Railroad and branches that an independent connection with the city of Scranton and with the railroads centering there should be secured for the said railroad, it is agreed between the parties hereto that The Lehigh Coal and Navigation Company shall assign to The Central Railroad Company of New Jersey the contract with the Delaware and Hudson Canal Company of January 27, 1887, a copy of which is hereto annexed marked "Exhibit C," under which it has the right to the unrestricted use of the Delaware and Hudson Canal Company's railroad between Union Junction and Minooka Junction, and shall procure a lease to The Central Railroad Company of New Jersey of the railroad which the Wilkesbarre and Scranton Railway Company is building from Minooka Junction to Scranton; and that The Central Railroad Company of New Jersey shall assume all the duties to the Delaware and Hudson Canal Company which under the said agreement of January 27, 1887, were assumed by The Lehigh Coal and Navigation Company, and shall lease the railroad of the Wilkesbarre and Scranton Railway Company upon terms which shall be generally similar to those of the existing lease of the Lehigh and Susquehanna Railroad and branches, except that the annual rental shall be fixed at the rate of 6 per cent on the cost of the Wilkesbarre and Scranton Railway as the same shall from time to time appear on the books of the said railway company, The Central Railroad Company of New Jersey assuming and paying all taxes that may by any lawful authority be assessed on the property of the Wilkesbarre and Scranton Railway Company, and on the rent or revenue derived by The Lehigh Coal and Navigation Company from said lease, so that The Lehigh Coal and Navigation Company shall receive the rent of 6 per cent on the cost of the Wilkesbarre and Scranton Railway free of all charges whatever; the lease of the Wilkesbarre and Scranton Railway and the assignment of the con-

tract with the Delaware and Hudson Canal Company being terminable by the party of the first part whenever the lease of the Lehigh and Susquehanna Railroad and branches shall terminate; and that The Central Railroad Company of New Jersey shall operate in connection with the Lehigh and Susquehanna Railroad, the aforesaid roads connecting the Lehigh and Susquehanna Railroad with the city of Scranton and with the railroads centering there; and

Whereas, it has been the purpose of the agreements heretofore made between the parties hereto, as is plainly declared in the deed of March 31, 1871, and elsewhere, that for the public convenience and accommodation and for the interest of the parties hereto, the railroads of the parties hereto, forming a continuous line of railroad from the Wyoming and Lehigh coal fields of Pennsylvania to the waters of the Hudson River at Jersey City, should be worked as one line and under one direction, it is agreed between the parties hereto that if at any time it shall be necessary for the purpose of maintaining the continuity of the said line of railroad and the unity of its management that the Lehigh and Susquehanna Railroad and branches should be operated by the Lehigh Coal and Navigation Company, then The Central Railroad Company of New Jersey shall and will request The Lehigh Coal and Navigation Company to operate the Lehigh and Susquehanna Railroad and branches, and The Lehigh Coal and Navigation Company shall accede to the request and shall operate the Lehigh and Susquehanna Railroad and branches for the account of The Central Railroad Company of New Jersey and at its charge and risk so long as it may remain necessary so to do in order to carry out the purpose of the existing agreements. In that event The Central Railroad Company of New Jersey shall furnish the equipment required, and shall in all other respects carry out the provisions of this agreement and of the deeds of March 31, 1871, and of May 29, 1883, the only change contemplated in the duties of The Central Railroad Company of New Jersey being that in the operation of the Lehigh and Susquehanna Railroad and branches it shall act through The Lehigh Coal and Navigation Company instead of through its own officers. And it is further agreed that when in the opinion of The Central Railroad Company of New Jersey there shall be no longer any necessity for the purposes hereinbefore set forth that The Lehigh Coal and Navigation Company shall continue to operate the Lehigh and Susquehanna Railroad and branches, then The Lehigh Coal and Navigation Company shall surrender to The Central Railroad Company of New Jersey possession of the Lehigh and Susquehanna Railroad and branches and of the equipment belonging to The Central Railroad Company of New Jersey, and The Central Railroad Company of New Jersey shall

assume and shall continue the operation of the Lehigh and Susquehanna Railroad and branches under the deeds of March 31, 1871, and of May 29, 1883, and this agreement.

The parties hereto respectively agree that The Central Railroad Company of New Jersey shall and will on or before the first day of January, 1888, deposit with the Fidelity Insurance Trust and Safe Deposit Company of Philadelphia $2,310,000 of the 5 per cent bonds to be secured by the proposed general mortgage of The Central Railroad Company of New Jersey, and that these bonds shall be pledged for the payment at maturity of $2,310,000 of the gold loan of The Lehigh Coal and Navigation Company falling due December 15, 1897, the payment of the principal and interest on which amount was assumed by The Central Railroad Company of New Jersey in the second of the covenants of the party of the second part in the agreement of March 31, 1871, these bonds being an additional security to that of the equipment which by the agreement just recited is charged with the payment of the above recited sum; and this being done, that The Lehigh Coal and Navigation Company shall and will on or before the first day of March, 1888, pay to The Central Railroad Company of New Jersey, in cash, such sum as may then stand to the credit of The Central Railroad Company of New Jersey on the books of The Lehigh Coal and Navigation Company for expenditures made on the Lehigh and Susquehanna Railroad and branches under the provisions of the first of the mutual covenants of the agreement of March 31, 1871, and The Lehigh Coal and Navigation Company shall and will thereafter pay The Central Railroad Company of New Jersey, in cash, for all expenditures that may be made under the provisions of the first of the mutual covenants of the agreement of March 31, 1871, as aforesaid, within twelve months from the end of the year in which such expenditures shall have been made: *Provided*, That The Central Railroad Company of New Jersey shall not, at the time when such payments may become due, be in default under the provisions of the agreement of March 31, 1871, or of the agreement of May 29, 1883, or of this agreement.

The parties hereto agree that in case of any breach of covenant or contract by The Central Railroad Company of New Jersey if the same shall not be fully compensated within a reasonable time the party of the first part may at its option declare the deed of March 31, 1871, and the deed of May 29, 1883, and this agreement to be determined, and may exercise all the remedies for enforcing its rights and for the possession of the demised property as the same are conferred by the deed of May 29, 1883.

The parties hereto agree that if anyone claiming under The Central Railroad Company of New Jersey, by virtue of any mortgage or prior grant or agreement, shall at any

time set up or pretend that he is entitled to any property or contract or to any benefit or interest in any property which is the subject of the deed of March 31, 1871, or of the deed of May 29, 1883, or of this agreement, but is not bound by the covenants in the deed of May 29, 1883, or by the terms of this agreement, nothing herein contained or which may be done under this agreement shall in any manner affect the right of The Lehigh Coal and Navigation Company to set up any matters in avoidance of that claim which it might do if this deed had never been executed nor the possession and control of the Lehigh and Susquehanna Railroad and branches enjoyed by The Central Railroad Company of New Jersey or acquiesced in by The Lehigh Coal and Navigation Company after January 1, 1887.

And the parties hereto agree that in case of any difference of opinion between them in relation to any of the provisions of this agreement which may be proper subjects of arbitration, the matters in dispute shall be referred to arbitrators, one to be appointed by The Lehigh Coal and Navigation Company and one by The Central Railroad Company of New Jersey, and the two thus chosen shall select a third, and their decision, or that of the majority of them, shall be final and conclusive.

This agreement shall be binding upon the parties hereto during the continuance of the estate granted and the contract made by the deeds of March 31, 1871, and of May 29, 1883, and shall together with the said deeds constitute one contract between The Lehigh Coal and Navigation Company and The Central Railroad Company of New Jersey, but all the rights and duties created by this agreement or under its provisions shall absolutely cease and determine whenever those deeds shall cease and determine for any consideration, whether by limitation or on account of the act or omission of The Central Railroad Company of New Jersey.

In witness whereof the parties hereto have caused their corporate seals, duly attested, to be hereunto affixed, the day and year first above written.

By order of the board of managers of—

THE LEHIGH COAL AND NAVIGATION COMPANY,
J. S. HARRIS, *President.*

Attest:

S. SHEPHERD, *Secretary.*

[SEAL L. C. & N. Co.]

THE CENTRAL R. R. CO. OF NEW JERSEY,
J. R. MAXWELL, *President.*

Attest:

SAML. KNOX, *Secretary.*

[SEAL C. R. R. Co. of N. J.]

[Acknowledgments follow but are not printed.]

EXHIBIT A.

Articles of agreement, made this 31st day of March, A. D. 1871, between The Lehigh Coal and Navigation Company, a corporation created by and existing under the laws of Pennsylvania, parties of the first part, and The Central Railroad Company of New Jersey, a corporation created by and existing under the laws of the State of New Jersey, parties of the second part.

Whereas, the parties of the first part are the owners of a railroad extending from a point at or near Wilkesbarre, in the State of Pennsylvania, to a point at or near Phillipsburg, in the State of New Jersey, having various branches within the said State, which are hereinafter mentioned, and the parties of the second part are the owners of a railroad beginning at the terminus of the said railroad of the parties of the first part at Phillipsburg, aforesaid, and extending in the State of New Jersey to a point on the Hudson River at Jersey City, and the said roads so connected form a continuous line of railroad from the Wyoming and Lehigh coal fields of Pennsylvania to the Hudson River aforesaid, and it is deemed desirable for the public convenience and accommodation and for the interest of the parties hereto that the said railroads should be worked as one line and under one direction.

And whereas, the parties of the first part are willing to contract for the working of their said railroad and the branches thereof hereinafter mentioned by the parties of the second part at the cost and risk of the parties of the second part and on fair and equitable terms, and the parties of the second part are willing on such terms to undertake the same:

Now, therefore, this agreement witnesseth, that the parties of the first part, in consideration of the premises and of the faithful performance of the covenants and agreements of the parties of the second part hereinafter mentioned and contained, and by the parties of the second part to be kept and performed, have granted, leased, and demised, and by these presents do grant, lease, and demise unto the parties of the second part, all the railroads of the parties of the first part within the State of Pennsylvania, including their bridge across the Delaware River at Easton, as follows, to wit:

The Lehigh and Susquehanna Railroad, extending from Phillipsburg, in the State of New Jersey, to Union Junction, in Luzerne County, Pa., where it connects with the railroad built by the Union Coal Company, a distance of 105 miles

more or less. Also, the railroad known as the Nanticoke Railroad, situated in said Luzerne County, extending from the Lehigh and Susquehanna Railroad at Ashley to the Newport mines, a distance of 8½ miles more or less, with a branch from the same extending to the Lee mines, a distance of 2 miles more or less; extending also from Ashley to Gardner's Switch, a distance of 4½ miles more or less; also extending from Union Junction to the Everhart mines, a distance of 3 miles more or less; and also extending from Mill Creek to the Enterprise mines, a distance of 4 miles more or less. Also, the branch railroad in the county of Luzerne known as the Nescopec Branch, extending from White Haven to Upper Lehigh, a distance of 9 miles more or less. Also, the Nesquehoning Valley Railroad, situated in the counties of Carbon and Schuylkill, extending from Nesquehoning Junction to Tamanend, where it connects with the Catawissa Railroad, a distance of 16½ miles more or less. Also, the Tresckow Railroad, in the counties of Schuylkill, Carbon, and Luzerne, extending from the Catawissa Railroad at Silver Brook to the Honey Brook mines, a distance of 6½ miles more or less. Also, the branch railroad in the counties of Northampton and Lehigh known as the Coplay Branch, extending from Laubach station to the furnaces of the Thomas Iron Company, a distance of 1 mile more or less. Also, the branch railroad in the county of Lehigh extending from the railroad near Bethlehem across the Lehigh River to a connection with the North Pennsylvania Railroad at South Bethlehem, a distance of 1,428 feet more or less. Also, the inclined planes in Luzerne County, with all the machinery connected therewith, extending from Ashley to Solomon's Gap station, a distance of 3 miles more or less; together with all sidings, station houses, machine shops, and other appurtenances of said roads and branches; and also all and singular the roadways, and also the franchises of the parties of the first part for maintaining and working the same and taking tolls thereon and for demanding and receiving compensation for the use of the same. Excepting and reserving out of this demise the Nesquehoning Tunnel and the railroads or railways laid therein and extending beyond the same; and also all railroads and railways extending from breakers into mines.

To have and to hold the said demised railroad and premises unto the parties of the second part, their successors and assigns, from the 1st day of April next ensuing the date hereof for and during the continuance of the charters of the said companies and of any renewals of the same; under and subject nevertheless to all the mortgages existing on the said demised premises: *Provided, however*, That the term of the lease of the Nesquehoning Railroad above mentioned shall not extend beyong the term of nine hundred and ninety-nine years from the 4th of November, 1868, less one day.

And the parties of the second part in consideration of the premises and of the faithful performance of the covenants and agreements of the parties of the first part hereinafter mentioned and contained to be kept and performed by the parties of the first part, have covenanted and agreed, and by these presents do covenant and agree, to and with the parties of the first part as follows, to wit:

First. That they, the parties of the second part, shall and will take and well and efficiently operate at their own cost and risk the said demised premises and all such extensions and additions as may be hereafter made of and to the same under the provisions of this agreement; and shall and will pay to the parties of the first part for the use of the same, at the times hereinafter mentioned, one-third of the gross receipts from the traffic or business of the said demised premises and extensions and additions thereto, without any other deductions therefrom than are hereinafter mentioned.

Second. The parties of the second part shall and will, on the 1st day of April next, purchase all the railroad equipment of the parties of the first part mentioned and described in the inventory hereunto annexed, at the prices mentioned or fixed in said inventory, amounting in the aggregate to the sum of $2,310,000, and in payment of said purchase money the parties of the second part shall and will assume and pay or discharge at or before the maturity thereof $2,310,000 of the 6 per cent bonds of the $5,000,000 gold loan of the parties of the first part falling due December 15, 1897, secured by the mortgage of the demised premises and of said equipment bearing date the 27th of November, 1867, subject to which mortgage this sale is made, the payment or discharges of the said bonds by the parties of the second part to be made by surrender of the same, from time to time, to the trustees of the said last-mentioned mortgage for cancellation, as the said bonds may be purchased or paid by the said parties of the second part, and an equal amount in value of said equipments to be released by the said trustees simultaneously with such surrender till the whole is released on the surrender of the whole amount of bonds assumed as aforesaid. And the parties of the second part shall and will assume the payment of the interest on said amount of the said bonds from and after the 1st day of April next, and shall and will pay or provide for the payment of the interest or coupons of said bonds or of such amount thereof as may be from time to time outstanding, as well as the taxes thereon, according to the true intent and meaning of the said bonds. And they also agree to maintain and perpetuate the said equipment and to replace such parts as may be destroyed by accident or use, so far as the same may be required to keep the said equipment not released as aforesaid subject to

the said mortgage equal in value to the amount of bonds assumed as aforesaid still outstanding; and the said equipment unpaid for shall be subject to annual inspection by the parties of the first part.

Third. The parties of the second part shall and will, on the 1st day of April next, take and pay for at a fair valuation, to be agreed on by the respective superintendents of the parties hereto, all the shop tools and machinery, all tools used in the maintenance of the road, all rails, ties, spikes, and chairs on hand for repairs, and all materials and supplies on hand in the shops or elsewhere, belonging to the parties of the first part.

Fourth. The parties of the second part shall and will, at their own cost and charges, maintain and perpetuate the railroad and premises demised, and shall and will keep and maintain the same in good order and repair and fit for efficient use, and will so return and redeliver up the same at the termination of this lease: *Provided*, That in case of damage to the said demised premises by freshet to the extent of $5,000 or more at any one time the repairs shall be made promptly by the parties of the second part, but at the cost and expense of the parties of the first part.

Fifth. The parties of the second part shall and will furnish, from time to time, at their own cost, the necessary machinery, rolling stock, and equipment of all kinds required for all the business of the demised premises, and carry on the said business at fair prices and with due reference to the interests of both companies. It being the true intent and meaning of this agreement that the demised premises shall be so worked and maintained by the parties of the second part as to secure the largest amount of revenue possible therefrom; but they shall not be bound to perform or do any act or thing which may divert from the railroad of the Lehigh Valley Railroad Company business which naturally belongs to the said railroad.

Sixth. It being understood that the parties hereto of the first part and the Lehigh Valley Railroad Company are competitors in the general railroad business of the Wyoming and Lehigh valleys, the parties of the second part do further covenant and agree that the Lehigh Valley Railroad Company shall not, by any act of the parties of the second part, have or obtain any interest in this agreement which shall be at any time asserted or exercised to the detriment of the parties of the first part, or of the revenues derived from the business of the demised premises, or the future increase thereof; but in case of any contract between the parties of the second part and the Lehigh Valley Railroad Company for merger, lease, or other combination of their interests the annual revenue or gross receipts of the parties of the first part shall never be less than the one-ninth of the aggre-

gate gross receipts derived from the Lehigh Valley Railroad and its branches and the premises hereby demised.

Seventh. The parties of the second part shall and will furnish, from time to time, on reasonable notice, all the cars that may be required by the parties of the first part, or their assigns, to transport the coal that may be mined by them, or their lessees for the time being, on lands of the said parties of the first part, including their collieries shipping through the Nesquehoning Tunnel, and to transport the same as consigned without unnecessary delay. All coal consigned by the parties of the first part, or their assigns, to points not reached by the roads controlled by the parties of the second part, or by the canals of the parties of the first part, shall be delivered by the parties of the second part to such other roads as will enable it to reach its ultimate destination.

Eighth. The parties of the second part shall and will furnish, on reasonable notice, all cars that may be required for the transportation of coal from any colliery on the line of the said demised roads, or any roads connecting therewith, destined for shipment at Coalport or Mauch Chunk or other shipping point by the canal of the parties of the first part. The rates on said coal from the collieries to the canal, over the road worked by the parties of the second part, shall not exceed the rates charged at the same time on the same portions of said road on coal from the same collieries when destined to same points by railroad: *Provided*, The aggregate charges shall not be less than 16 cents per ton, and that all expenses of shipping from the cars into boats, maintaining the tracks and sidings at the shipping points on said canal, and transferring the coal by shifting engines at said points shall be borne by the parties of the first part.

Ninth. The parties of the second part covenant and agree that on all business passing in whole or in part over said demised railroad and branches, and in whole or in part over the railroad or railroads owned or controlled by the parties of the second part, the said parties of the second part shall and will credit to the said road and branches hereby demised their full pro rata proportion (according to the distance carried on said roads) of all gross receipts derived from such business, subject only to such terminal and other charges as are usual and general; and in prorating the distances to and from the Wyoming Valley they shall be computed as if over the "back track," even when the business is carried over the planes.

Tenth. The parties of the second part further covenant and agree that on coal delivered for transportation by the parties of the first part on sidings at the northern end of the Nesquehoning Tunnel the rates of transportation shall not exceed the rates charged at the same time from Penn Haven

to the same points on coal from the Lehigh region, either by the parties of the second part or by the Lehigh Valley Railroad Company.

Eleventh. The parties of the second part further covenant and agree that the provisions of the contract with the Wilkesbarre Coal and Iron Company, as far as they relate to transportation, shall extend to all coal mined in the Wyoming Valley by the parties of the first part, or from their lands by their lessees or assigns, and to coal from collieries in said valley whose product is controlled under existing contracts by the parties of the first part; and upon the termination of the said contract with the said Wilkesbarre Coal and Iron Company, as therein provided, the parties of the second part shall and will transport the said coal at rates not higher than those charged to other parties shipping coal from said region, such rates, if unsatisfactory, to be submitted to arbitration as hereinafter provided.

Twelfth. The parties of the second part shall and will assume and well and faithfully perform all the obligations of the parties of the first part under contracts set out in the schedule annexed to this agreement, as far as they relate to transportation upon the said demised premises, and so far as they are binding on the said parties of the first part, receiving in consideration therefor all the benefits of the said contracts.

Thirteenth. The parties of the second part shall and will keep in proper books, to be provided by them, full and accurate and separate accounts of the business of the road and its branches hereby demised, which shall be open to the inspection and examination of the parties of the first part at all times, upon reasonable request and notice.

Fourteenth. The parties of the second part covenant and agree that all persons traveling over the roads hereby demised in the prosecution of the business of the parties of the first part shall be allowed to pass free of charge, subject to the rules and regulations of the parties of the second part applicable to other persons having the like privileges.

And the parties of the first part do hereby covenant and agree to and with the parties of the second part as follows, to wit:

First. That all coal mined by the parties of the first part on lands now owned by them, or that may be hereafter acquired by them, shall be sent to market over the roads of the parties to this agreement, when destined to points or markets reached by the said roads; and when destined for markets not so reached, it shall be sent as far as practicable over said roads, excepting always coal destined for shipment by canal, and excepting all coal covered by contracts now existing and mentioned in the twelfth of the foregoing covenants of the parties of the second part: *Provided*, That one-

fourth of the coal mined annually by the parties of the first part in the Wyoming region may be sent to markets not reached by lines running toward the Delaware River.

Second. The parties of the first part covenant and agree that in case the coal lands now owned and held by them, or that may be hereafter acquired by them, shall be sold, leased, or transferred by them to other parties; all such lands shall nevertheless be subject to the provisions of this agreement.

Third. The parties of the first part covenant and agree that rates of transportation of coal and other freights upon their canal, between points common to both railroad and canal, shall be arranged from time to time by the parties hereto; and shall conform as nearly as possible to the rates at the time on the railroads between the same points, it being understood that the canal rates may be reasonably below the rates to the same points on the railroad, as heretofore accustomed, so that each shall be used to reach markets and points which can be best supplied by the respective works.

Fourth. The parties of the first part covenant and agree that their corporate rights and privileges shall, at all times, be used in the construction of additional roads and branches when required as herein stipulated, or to aid the parties of the second part in carrying out the provisions of this agreement.

Fifth. The parties of the first part covenant and agree that the parties of the second part shall have the option at any time within three years from the first day of August next to lease the canal and its appurtenances, excepting ground and water rents now existing, at a net annual rent of $300,000, assuming in connection therewith the lease of the Delaware Division Canal.

Sixth. The parties of the first part covenant and agree that in case of the nonpayment of interest by them on any of the mortgages now existing on the demised premises, or if necessary to provide the sums due at any time to any time to any sinking fund stipulated for in any of the said mortgages, the parties of the second part shall have the right to pay directly to the trustees of any such mortgage so much of the rent due and payable to the parties of the first part under this agreement as may be necessary for the said purposes.

Seventh. The parties of the first part covenant and agree that they have full power and authority, under the laws of Pennsylvania, to make and execute this lease, transfer, and contract, so as to fully vest the said demised premises and property in the parties of the second part as herein provided; and that the parties of the second part shall have full right to take, occupy, and use the said railroad, with its appurtenances, under the lease, transfer, and contract.

And it is mutually covenanted and agreed by the parties hereto, as follows:

First. That all expenditures required for extending the road or its branches hereby demised, or for additional branches, second track, additional sidings, stations, shops, or other buildings, for improving the alignment of the road at Stony Creek at a cost not exceeding $200,000, and for masonry walls as a protection against freshets, shall be at the expense of the parties of the first part; but no such expense shall be incurred without the consent in writing of the said parties of the first part, which consent shall not be withheld without reasonable cause. All such improvements shall be made by the parties of the second part, and the cost thereof advanced by them if required, they receiving on such advances a semi-annual percentage equivalent to the dividends declared during the same period on the stock of the parties of the first part: *Provided*, That such percentage shall not be less than 7 per cent per annum: *And provided also*, That the parties of the first part may at any time refund such advances.

Second. That all railroads or railways with their branches, extensions, sidings, and buildings connected therewith, hereafter constructed under the franchises of the parties of the first part and with the concurrence of both the parties hereto, shall, when and as the same are constructed, be deemed, and taken to pass under this agreement as part of the premises hereby demised, and all necessary deeds to carry this covenant into effect shall be executed by the parties hereto upon request of either.

Third. That the parties of the first part shall and will, by and with the consent of the board of managers of the Railroad Car Trust of Philadelphia and of the Lehigh Equipment Trust of Philadelphia, respectively, assign and transfer to the parties of the second part, and the parties of the second part shall and will take by such assignment, all the leases of cars and locomotives made by the said trusts, respectively, to the parties of the first part, and all the cars and locomotives mentioned in the said leases respectively, and described or mentioned in the second inventory hereto annexed. And such assignment being made, the parties of the second part shall and will thereupon assume and pay all the obligations of the parties of the first part under the said trusts and leases respectively.

Fourth. That all dwelling houses, except station houses, are excepted from this lease. But the parties of the second part may at their own cost erect additional houses on any part of the demised premises and receive the rents of such houses to their own use.

Fifth. That all settlements between the parties and payments of rent by the parties of the second part for the said demised premises shall be made monthly on the fifteenth day of the month, or as soon thereafter as possible.

Sixth. That in case of any difference of opinion between the parties hereto in relation to any of the provisions of this contract, or in case either party shall be dissatisfied with the manner in which the business is done by the other party, the matters in dispute shall be referred to arbitrators to be appointed in the usual manner, whose decision or a majority of them shall be final and conclusive.

Seventh. That in case of any breach of covenant on the part of the parties of the second part, their successors or assigns, and notice thereof given by the parties of the first part, or their assigns, to the parties of the second part, if the same can not or shall not be fully compensated within a reasonable time thereafter, then and in such case the parties of the first part, or their assigns, may, at their option, declare this lease to be terminated and the agreements herein contained to be rescinded, and may thereupon enter on the demised property and premises as and for condition broken, and repossess themselves as of their old and former estate, and may resume, take, use, and enjoy all the rights, privileges, and franchises hereby demised or granted as if this agreement had never been made; and this contract shall from thenceforward be deemed and taken to be utterly ended, saving and excepting the right of the parties of the first part or their assigns to sue for and recover, by any proceedings at law or in equity, compensation for all damages for, or by reason of, any breach or breaches of any covenant or covenants on the part of the parties of the second part, as fully as if this agreement continued in full force; and saving and excepting the rights of the parties of the second part to the previous repayment of all advances made by them for improvements, and also saving and excepting the personal property purchased and paid for by the parties of the second part; but no such option of declaring this lease terminated shall be exercised by the parties of the first part or their assigns while there exists any default under this agreement on their part.

In witness whereof, the said parties have caused their corporate seals to be hereunto affixed, duly attested, the day and year first above written.

By order of the board of managers of—

THE LEHIGH COAL AND NAVIGATION COMPANY,

[L. S.] E. W. CLARK, *President*

F. MITCHELL, *Secretary*.

CENTRAL RAILROAD COMPANY OF NEW JERSEY,

Per JOHN TAYLOR JOHNSTON, *President*.

Attest:

[L. S.] SAML. KNOX, *Secretary*.

EXHIBIT B.

Articles of agreement, made this 29th day of May, 1883, by and between The Lehigh Coal and Navigation Company of the first part, The Central Railroad Company of New Jersey of the second part, and The Philadelphia and Reading Railroad Company of the third part.

Whereas, The Lehigh Coal and Navigation Company and The Central Railroad Company of New Jersey entered into certain articles of agreement under date of March 31, 1871, a copy of which is hereto annexed, marked "Exhibit A;"

And whereas, the parties hereto are willing to covenant and agree to and with one another as hereinafter set forth:

Now, therefore, this agreement witnesseth, that the parties hereto have covenanted and agreed and do hereby covenant and agree to and with each other as follows:

First. This agreement is to be deemed and taken to have been incorporated into the contract of March 31, 1871 (but only to be operative from and after June 1, 1883), as if originally there written, and each party is to have the same remedies as are provided in the original contract for all rights secured by the contract as thus modified, and as if the said original contract had been herein recited and set forth at length as part hereof; and wherever in this agreement the expression "Lehigh and Susquehanna Railroad and branches" is used, it shall be taken to include all the railroads now or hereafter to be operated under the original contract of March 31, 1871, and this supplemental agreement.

Second. The Central Railroad Company of New Jersey agrees that inasmuch as The Philadelphia and Reading Railroad Company, after it takes possession of the Lehigh and Susquehanna Railroad and branches, will also become responsible for the proper conduct of the business und[illegible] the provisions of the aforesaid agreement of March 31 1871, any breach of the covenants of the original contract or of this supplemental agreement by The Philadelphia and Reading Railroad Company shall have the same effect in all respects as if the breach had been committed by The Central Railroad Company of New Jersey.

Third. The Philadelphia and Reading Railroad Company agrees that it will assume and become liable for the faithful execution of all the covenants in the said agreement contained, and on the part of the said The Central Railroad Company of New Jersey to be kept and performed, and will keep, maintain, and fulfill the same according to their full intent and meaning, and will carry out all other contracts made by or on behalf of The Central Railroad Company of

New Jersey, in which The Lehigh Coal and Navigation Company may have an equitable interest; will develop the business of The Lehigh and Susquehanna Railroad and branches in accordance with the provisions of the said agreement of March 31, 1871, and the terms of this supplemental agreement; and where additional railroads shall be necessary to develop and secure business in the anthracite coal fields east of the line of The Little Schuylkill and Catawissa railroads, will cause them to be built under the provisions of the first and second mutual covenants of the contract of 1871; will cause the development of The Lehigh and Wilkesbarre Coal Company's lands to proceed *pari passu* with that of the lands of The Philadelphia and Reading Coal and Iron Company, so that the production of the two coal estates shall bear to each other the numerical relation of twenty-eight for The Lehigh and Wilkesbarre Coal Company to seventy-two for The Philadelphia and Reading Coal and Iron Company, at least until the production of The Lehigh and Wilkesbarre Coal Company's lands shall reach three million tons per annum, beyond which it shall not be required to be increased, but which shall be maintained till it shall be no longer possible to make the said mines produce at that rate; and if the production of the said lands shall in any one year bear a less ratio to the production of The Philadelphia and Reading Coal and Iron Company's lands than the aforesaid ratio, will send such an amount of coal from The Philadelphia and Reading Coal and Iron Company's, or other anthracite coal lands lying west of Tamanend, over The Lehigh and Susquehanna Railroad from Tamanend, as shall bring the coal tonnage-mileage of the Lehigh and Susquehanna Railroad system up to what it would have been if the above stipulation in regard to the production of The Lehigh and Wilkesbarre Coal Company's lands had been carried out, and will cause the production of the Lehigh and Wilkesbarre Coal Company's lands to pass to or towards its markets over the lines of The Lehigh and Susquehanna Railroad and branches. And it further agrees that the rates of transportation of coal or other freight from or to any property in the anthracite region which may at any time be owned, controlled, or operated by The Lehigh Coal and Navigation Company, shall never be higher than the lowest rates given to any other producer or shipper of anthracite coal for similar consignments and like distances, and that it will join with The Central Railroad Company of New Jersey in carrying out the provisions of the contract between The Central Railroad Company of New Jersey and the Alliance Coal Mining Company, of August 10, 1881, a copy of which, marked "Exhibit B," is hereto annexed.

Fourth. And the said The Philadelphia and Reading Railroad Company further covenants and agrees that the aggregate rental of The Lehigh and Susquehanna Railroad, after the date of this agreement, shall never in any year be less than $1,414,400, but if the one-third of the gross receipts from the operation of The Lehigh and Susquehanna Railroad (settlements for which shall be made monthly as heretofore) shall not amount in any year to the said sum, The Philadelphia and Reading Railroad Company will nevertheless pay at the end of the calendar year such additional sum as will make the rental of The Lehigh Coal and Navigation Company from the said Lehigh and Susquehanna Railroad and branches equal thereto; and in consideration of this undertaking The Lehigh Coal and Navigation Company covenants and agrees that after it shall have received from its one-third of the gross receipts derived from the operation of the said Lehigh and Susquehanna Railroad and branches during any calendar year prior to December 31, 1887, the sum of $1,728,700, or in any calendar year thereafter prior to December 31, 1892, the sum of $1,885,800, or in any calendar year thereafter the sum of $2,043,000, together with a further sum in each year equal to 7 per cent upon the amounts which shall be charged after December 31, 1882, upon the books of The Lehigh Coal and Navigation Company for payments for right of way or for expenditures made or to be made by The Central Railroad Company of New Jersey or the Philadelphia and Reading Railroad Company for construction, as shown by the accounts rendered or to be rendered by either of the said corporations under the first and second of the mutual covenants in the original agreement of March 31, 1871, as will waive, relinquish, and release and does hereby waive, relinquish, and release, the surplus or excess of its one-third share of the said gross receipts to the said The Philadelphia and Reading Railroad Company, but nothing herein contained shall be deemed or taken to release The Lehigh Coal and Navigation Company from paying 7 per cent on the amount already advanced by The Central Railroad Company of New Jersey and on the amounts hereafter expended, and which are repayable by the Lehigh Coal and Navigation Company, as provided by the agreement of March 31, 1871, until The Lehigh Coal and Navigation Company shall have refunded such advances. And The Central Railroad Company of New Jersey hereby agrees that the sums herein stipulated to be paid and which it agrees may be paid to The Lehigh Coal and Navigation Company shall be in lieu and satisfaction of the rent reserved in the agreement of May 29, 1883, between The Central Railroad Company of New Jersey and The Philadelphia and Reading Railroad Company (a copy of which, marked

"Exhibit C," is hereto annexed) as accruing under the provisions of the agreement of March 31, 1871; and upon the payment by The Philadelphia and Reading Railroad Company to The Lehigh Coal and Navigation Company, its successors and assigns, of the sums herein stipulated to be paid the said The Philadelphia and Reading Railroad Company shall be relieved from said portion of the rental reserved in the agreement of May 29, 1883, aforesaid, and the excess or remainder, if any, of said gross receipts, after making the payments herein stipulated to The Lehigh Coal and Navigation Company, shall be retained by The Philadelphia and Reading Railroad Company for its own use and benefit.

Fifth. And the parties hereto further agree that in case of any difference of opinion between the parties hereto in relation to any of the provisions of this agreement, or in case either party shall be dissatisfied with the manner in which the business is done by the other party, the matters in dispute shall be referred to arbitrators, one to be appointed by The Philadelphia and Reading Railroad Company and one by The Lehigh Coal and Navigation Company, and the two thus chosen to select a third, and their decision or that of a majority of them shall be final and conclusive.

Sixth. And all the parties hereto agree that in case of any breach of covenant on the part of the parties of the second or third part, if the same shall not be fully compensated within a reasonable time, the party of the first part may, at its option, declare the agreement of March 31, 1871, to be terminated and the agreements therein contained and this agreement to be rescinded, and may thereupon enter on the demised premises as and for condition broken and repossess itself of its old and former estate, and may resume, take, use, and enjoy all its original rights, privileges, and franchises, as if this agreement and the said agreement of March 31, 1871, had never been made.

In witness whereof, the parties hereto have caused their corporate seals, duly attested, to be hereunto affixed, the day and year first above written.

J. S. HARRIS, *President.*

Attest:
S. SHEPHERD, *Secretary.*
[Seal L. C. & N. Co.]

H. S. LITTLE, *President.*

Attest:
SAML. KNOX, *Secretary.*
[Seal C. R. R. Co. of N. J.]

FRANKLIN B. GOWEN, *President.*

Attest:
ALBERT FOSTER, *Secretary.*
[Seal P. & R. R. R. Co.]

EXHIBIT C.

This agreement, made this 27th day of January, A. D. 1887, between the president, managers, and company of the Delaware and Hudson Canal Company, hereinafter referred to as the Delaware Company, and The Lehigh Coal and Navigation Company, hereinafter referred to as the Lehigh Company.

Whereas the Delaware Company did on the 7th day of November, 1886, take control of the Union Coal Company's railroad, hereinafter called the Union Railroad, which railroad had theretofore been operated jointly by the Lehigh Company and the Delaware Company, and has furnished the connection between Union Junction, the terminus of the Lehigh and Susquehanna Railroad of the Lehigh Company, and Scranton; and

Whereas the Lehigh Company, itself or through the Wilkesbarre and Scranton Railway Company, a corporation controlled by it, has purchased ground for terminal facilities at Scranton, and has located and proposes to build a line between Scranton and a point near Minooka Station, hereinafter called Minooka Junction, and proposes also to build or to procure the building of, and to use, when built, a cut-off line from Laurel Run Station, on the Lehigh and Susquehanna Railroad of the Lehigh Company, to a connection with the Union Railroad near Pittston Station, at a point hereinafter called Pittston Junction; and

Whereas both parties hereto agree that it is desirable to make such use of the existing lines of railroad as to meet the requirements of the public in the matter of transportation, and for this purpose the Delaware Company is willing to grant permanent rights to the Lehigh Company for so much of the said Union Railroad as the Lehigh Company may desire to use as hereinafter provided; and

Whereas the object of this agreement is to furnish the Lehigh Company with a line of railway connecting its present railway at Union Junction with the proposed railway from Minooka Junction to Scranton, and also with the proposed railway from Laurel Run Station to Pittston Junction, over which connecting line its traffic shall pass freely, and from which it can not be excluded by reason of any adverse interest obtaining control of the management of the Delaware Company's line:

Now this agreement witnesseth:

First. That the Delaware Company has granted, demised, and let, and by these presents doth grant, demise, and let, unto the Lehigh Company, for a period of nine hundred and ninety-nine years from the date of this agreement, subject to the reasonable regulation and control of the lessor as to the movement and government of trains, the right to pass with its trains and locomotives over the aforesaid line of the lessor between Union Junction and Minooka Junction, and vice versa, with the right to use in connection with such trains all present or future water stations, sidings, and other facilities necessary for the accommodation of such trains and the traffic to be transported by them, as freely as if the lessee was the owner of the railroad hereby demised, paying to the lessor, as rent for the demised premises, forty-two and one-half per cent of the gross earnings on all coal, passengers, express, parcel, and freight traffic that shall accrue to such portion of the Union Railroad as it, the lessee, shall use; the total gross earnings in each case being divided in proportion to the actual mileage used of the Union Railway and the Lehigh Company's railroad, provided that if the Lehigh Company shall take water from any of the Delaware Company's water stations, it shall share in the expense of maintaining such stations in proportion to the consumption of water by each of the parties hereto. But the right to haul such traffic over the Union Railroad by the Lehigh Company's locomotives shall not apply to business originating at points north of Scranton on the Delaware Company's lines, or on the connecting lines forming the extensions thereof and destined to points south of Pittston Junction or Wilkesbarre on the Lehigh Company's lines, or on connecting lines forming the extensions thereof or originating at points south of Pittston Junction or Wilkesbarre on the Lehigh Company's lines, or on connecting lines forming extensions thereof, and destined to points north of Scranton, on the Delaware Company's lines, or on connecting lines forming extensions thereof; all of which business shall be hauled by the Delaware Company's locomotives as provided in section third.

Second. The Lehigh Company shall have the right to make a connection between the Union Railroad tracks and the tracks of the line to be built from Laurel Run Station to Pittston Junction, and also a connection between the Union Railroad tracks and the tracks of the Spring Brook Railway near Moosic Station; and also a connection between the Union Railroad tracks and the tracks of the Lackawanna and Bloomsburg Railroad at such point between Moosic and Minooka as may be agreed on with the Delaware, Lackawanna and Western Railroad Company, it being the true intent of this stipulation to enable the Lehigh Company to

secure business from the roads just named; but this right of connecting is not intended to permit it to secure business from other points on the Delaware Company's lines by means of lateral or auxiliary tracks leading thereto from the said Lackawanna and Bloomsburg Railroad and the said Spring Brook Railway, nor to take over the Union Railroad business, which having originated at points south of the parallel of latitude passing through Wilkesbarre, shall reach Wilkesbarre by other roads than the Lehigh and Susquehanna Railroad, and shall be destined to points on the Union Railroad east of Wilkesbarre or to other points on the Delaware Company's lines.

Third. It is agreed for the present that through freight traffic originating at or destined to points on the Delaware Company's lines north of Scranton or on connecting lines forming extensions of the Delaware Company's lines; and through freight traffic destined to or originating at points on the Lehigh Company's line south of Wilkesbarre or on connecting lines forming extensions of the Lehigh Company's lines, shall be exchanged at Wilkesbarre, and shall be hauled by the Delaware Company's locomotives over the Union Railroad, and that the Delaware Company, for all such freight hauled by its locomotives over the Union Railroad, shall be entitled in the division of the through rate to be credited with at least forty miles from Wilkesbarre, though the distance so hauled may have been less; and similarly, that on all freight so exchanged and hauled by the Lehigh Company's locomotives south of Wilkesbarre, the Lehigh Company shall be entitled to be credited with at least forty miles; but it is further agreed that after the cut-off line from Laurel Run Station to Pittston Junction shall have been completed, the said exchange shall be made at Pittston Junction, in which case each party hereto shall, as before, be entitled to at least forty miles in the division of the through freight rate. But nothing in this section shall be so construed as to require the Lehigh Company to receive less in the division of the freight rate on business of the western cooperative lines than it now receives, except it should assent to such a change.

Fourth. Each party hereto will provide its own time-tables for the running of such trains over its lines as it may desire in carrying out the provisions of this agreement, it being understood that the Delaware Company's trains are to have preference over the Lehigh Company's trains of the same class on the Union Railroad.

Fifth. It is agreed that the parties hereto will extend each to the other as good facilities and rates in every respect as it accords to the most favored of the lines with which it may become connected.

Sixth. Each of the parties hereto shall be permitted to examine such of the books and records or other documents or papers of the other party as may be necessary to verify or confirm settlements proposed or made in accordance with the terms of this agreement.

Seventh. It is intended that the rights of trackage hereinbefore granted by the Delaware Company to the Lehigh Company shall continue during the term of this agreement, and that the successors and assigns of either of the parties hereto shall have the rights and privileges and shall be charged with the duties herein assumed by the parties to this agreement, but the basis of compensation to the Delaware Company for the use of the railroad and other facilities specified in the first section, and the basis of the minimum distances to be charged by either party on through freights as specified in the third section, may be readjusted on the 1st day of January, 1892, and each five years thereafter: *Provided*, That either of the parties hereto shall give ninety days' notice to the other before the expiration of each period of its desire for such readjustment. The basis on which such readjustments shall be made shall be the usual railroad practice existing at the time of such readjustments, and if the two parties shall not be able to agree on this question or on any other question arising under this agreement, the matters in dispute shall be referred to arbitrators, one to be appointed by the Delaware Company and one by the Lehigh Company, and the two thus chosen to select a third, and their decision or that of a majority of them shall be final and conclusive.

Eighth. The Lehigh Company shall have the right to assign its interest in this contract to the Central Railroad Company of New Jersey for the term during which that company shall be the lessee of the Lehigh and Susquehanna Railroad of the Lehigh Company, and the Central Railroad of New Jersey shall thereupon be entitled to have and exercise all the rights and privileges herein granted by this agreement to the Lehigh Company; and the Lehigh Company, upon the termination of the said lease of the Lehigh and Susquehanna Railroad to the Central Railroad Company of New Jersey, shall have the right to resume its rights under this agreement as fully as if they had never been assigned to any other company, but neither of the parties hereto shall have the right to otherwise assign any of its rights under this agreement without the consent in writing of the other party.

Ninth. In case of accident to the trains passing over any part of the Union Railroad that may be used by the Lehigh Company the Lehigh Company and the Delaware Company shall each be held liable for any damage done by such acci-

dents occurring through the neglect or misconduct of its own employees or through the failure or defect of its own equipment. The Delaware Company shall be liable for any damage done through the failure or defect of its roadway or the appurtenances thereto. When damage occurs to the property of the parties hereto through the joint negligence of their employees, neither party shall have recourse against the other, but where damage occurs to the public and one of the parties is compelled to pay the same, the other party contributing to such negligence shall contribute equally to such loss.

Tenth. In case either of the parties hereto shall wilfully violate the terms of this agreement, the other party may terminate the same upon giving six months' notice of its election to do so.

Eleventh. It is agreed that if at any time hereafter the Lehigh Company shall construct or operate any other line beyond Scranton, except as herein provided, this agreement shall cease and determine.

In witness whereof, the said parties hereto have caused their respective corporate seals, duly attested, to be hereunto affixed the day and year first above written.

Sealed and delivered in the presence of—

THE PRESIDENT, MANAGERS AND COMPANY OF THE DELAWARE AND HUDSON CANAL COMPANY,
By
R. M. OLYPHANT,
President.

[SEAL.] (Signed)

Attest:
(Signed) J. C. HARTT,
Treasurer.

By order of the board of managers of the Lehigh Coal and Navigation Company.

[SEAL.] (Signed) J. S. HARRIS,
President.

(Signed) S. SHEPHERD,
Secretary.

[Recorded in Luzerne and Lackawanna Cos., Pa., in Feb. and Mar., 1887.—Certificate of acknowledgment and record not printed.]

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103 In the District Court of the United States for the Eastern District of Pennsylvania.

September term, 1913. No. 1095. In Equity.

UNITED STATES OF AMERICA, PETITIONER,
vs.
THE READING COMPANY ET AL.

Answer of the Lehigh Coal & Navigation Company to the petition of the United States of America as far as the same relates to this defendant.

(Filed October 18, 1913.)

This defendant, now and at all times hereafter saving unto itself all and all manner of benefit of exception and otherwise, which can or may be taken to the manifold errors, uncertainties, and imperfections contained in the bill of complaint, for answer thereto, or unto so much thereof as this defendant is advised is material or necessary that it should answer, answering says:

104 First. This defendant admits that it was created a corporation by the special act of the State of Pennsylvania of February 13th, 1822, P. L., 21, and acquired and possesses all the powers and is subject to all the obligations imposed by the said act, together with the acts referred to therein and those supplemental thereto. This defendant further admits that its capital stock and funded debt are as alleged in said bill as of December 31st, 1912.

Under the said act of February 13th, 1822, this defendant acquired all the rights and privileges and was made subject to all the obligations granted and imposed by an act approved March 20th, 1818 (7 Sm. L., 86), entitled "Aan act to improve the navigation of the River Lehigh," authorizing Josiah White, George F. A. Hauto, and Erskine Hazard to improve the navigation of the said river and granting them certain rights and privileges in consideration of the public benefit to be brought about by such improvement. The grantees under the act of 1818 were largely interested in coal mines in Carbon County above Mauch Chunk, and the improvement of the navigation of the river by constructing a slack water navigation therein was for the purpose of transporting to market the coal which they so owned. In pursuance of the above legislation, Messrs. White, Hauto, and Hazard, and subsequently this defendant, constructed a slack water navigation up the river Lehigh as far as Stoddartsville and by means of this canal transported anthracite coal down the river to Easton. Meanwhile, the State of Pennsylvania had constructed the Delaware Division Canal from Easton to Bristol at which latter point tide water transportation in the Delaware River begins. By means of this improvement it was

possible to bring coal from the anthracite region to Philadelphia, and to introduce the use of anthracite in Philadelphia and vicinity. By the act of March 13th, 1837 (P. L., 53), the Lehigh Coal and Navigation Company was authorized to construct and operate a railroad connecting with the slack water navigation of the
105 Lehigh near White Haven over the divide to Wilkes-Barre, in the heart of the Wyoming region. This railroad was constructed, completed, and in operation within the years subsequent to 1837 and it was thus made possible to transport coal from the Wyoming region down the Lehigh to tide water. In 1862 there were disastrous floods on the Lehigh, which swept away a large part of the canal between Mauch Chunk and White Haven and in view thereof the legislature by the act of March 4th, 1863 (P. L., 99), relieved the company of its duty to repair the slack water navigation above Mauch Chunk and imposed upon it the duty and gave it the authority to build a railroad from White Haven to Mauch Chunk. Subsequently by the act of March 16th, 1864 (P. L., 11), the Lehigh Coal and Navigation Company was empowered to extend this railroad from Mauch Chunk down the valley of the Lehigh to the River Delaware and to cross the latter with a bridge to connect with railroads in New Jersey at Philipsburg. The Lehigh Coal and Navigation Company had also purchased large quantities of coal land in the Wyoming Valley and had acquired control of the Honey Brook Coal Company, which owned other coal lands in the Hazelton region. The real inducement, therefore, for the construction of the slack water navigation in the river Lehigh, of the canal along the said river, and of the railroad from Wilkes-Barre to the Delaware, was that the owners of coal lands in Carbon and Luzerne counties might be able to move their coal to market, and had it not been for the ownership of such coal by the same parties who built the said canal and railroad, these important public highways would never have been constructed as and when they were, nor would they have been constructed without the pledge of the faith of the Commonwealth of Pennsylvania that the owners of these successive improvements should be able to insure a reasonable return upon the cost of said improvements by reason of their ability to send the product of their mines to market over the highways thus created.

106 Second. This defendant admits that it is the lessee of the Delaware Division Canal belonging to the Delaware Division Canal Company, running from Easton to Bristol and connecting at Easton with the Lehigh Canal. The said Delaware Division Canal was originally constructed by the State of Pennsylvania and was sold to the Sunbury and Erie Railroad in pursuance of the Act of April 21st, 1858 (P. L., 414), and by the Sunbury and Erie Railroad sold to the Delaware Division Canal Company, which leased its canal and rights to the Lehigh Coal and Navigation Company by lease dated Aug. 20th, 1866. The defendant avers that with

regard to the Lehigh Canal it has exercised such powers as were granted by its charter, and with regard to the Delaware Division Canal it has exercised such powers as were consistent with its charter and with the lease under which it held the said canal, and with the act of assembly under which the said canal was acquired from the State of Pennsylvania as aforesaid.

Third. This defendant admits that it constructed, owns, and formerly operated the so-called Lehigh and Susquehanna Railroad as alleged in the said bill and that it owns and controls more than 13,000 acres of coal bearing lands in the Lehigh region estimated to contain more than $500,000,000 tons of available anthracite coal, from which it produces annually about 3,700,000 tons, shipping the same to the points alleged in the said bill in pursuance of sales contracts previously made. It further admits that it formerly owned over 5,000 acres of coal-bearing lands in the Wyoming region. Of the coal lands in the Lehigh region, the greater part were acquired by the company in 1822 from Messrs. White, Hauto, and Hazard and their associates. The Wyoming coal lands were acquired in 1865, 1867, and 1869. Defendant admits that it owns, maintains, and repairs its breaker delivery tracks apurtenant to its several colliers in the Panther Creek district, which said tracks are connected
107 with the lines of certain common carriers. It denies that it operates any line of railroad as a common carrier in the Panther Creek Valley or elsewhere, although it avers that under its charter it has the right and power to engage in the business of a common carrier.

Fourth. Defendant admits that the so-called Lehigh & Susquehanna Railroad extending from the Wyoming coal region across the Delaware River to Philipsburg was completed in 1868 and was operated until April 1st, 1871, by its builder and owner, this defendant, as alleged in article seven of the said bill. It further admits that the said railroad connects with the roads alleged in said article of said bill.

Fifth. Defendant admits the execution of the lease dated March 31st, 1871, annexed to the said bill, and for the terms of the same, refers to the said lease.

Sixth. Defendant admits the sale of its coal lands and mines in the Wyoming region to the Honey Brook Coal Company in 1873, and the lease of its lands and coal in the Lehigh region to the said company, and the further lease of its canal from Coalport to Bristol to the Central Railroad Company of New Jersey, as alleged in said bill. It further admits that in January, 1878, the lands, mines, and canals so leased in December, 1873, were surrendered, the Lehigh Coal and Navigation Company resuming the possession and operation thereof; the said resumption being upon the authority of the court directing the then receivers of the Lehigh and Wilkes-Barre Coal Company and the Central Railroad Company of New Jersey, none of the foregoing arrangements were made for the purpose of forming any combination or monopoly in the production of anthra-

cite coal, or for stifling competition therein, but simply for business reasons in order to secure the improvement and development of the coal lands and to secure to the railroad as large a tonnage as possible for the purpose of yielding a reasonable return upon its cost.

108 Seventh. Defendant admits the execution by it of the supplemental agreement dated May 29th, 1883, and of the supplemental agreement dated January 27th, 1887, annexed to the said bill and for the terms thereof refers to the said supplemental agreements. Said supplemental agreement of 1883 was entered into by the Lehigh Coal & Navigation Company after the Central Railroad Company of New Jersey had agreed to make a lease of its railroad and other property to the Philadelphia & Reading Railroad Company, including the Lehigh & Susquehanna Railroad. The main purpose of the said suppplemental agreement of 1883 was to prevent the Philadelphia & Reading Railroad Company after its acquisition and control of the said railroad, from diverting the coal tonnage from the Wyoming region and other traffic over the lines of the Philadelphia & Reading Railroad Company to the detriment of the tonnage over the so-called Lehigh & Susquehanna Railroad. The supplemental agreement of 1887 was entered into after the insolvency and receivership proceedings of the Philadelphia & Reading Railroad Company had begun and when the lease and control of the Lehigh & Susquehanna Railroad to and by the said Philadelphia & Reading Railroad Company had determined. Defendant denies any practice by the parties to any of the said agreements or supplemental agreements in any way modifying the terms thereof or affecting the legal validity or interpretation thereof.

Eighth. Defendant admits that approximately six per cent of its total output of coal moves to market over its canal. It further admits that during the existence of the said lease of 1871 and supplements, except in the period from 1873 to 1878, it has owned, mined and sold large quantities of anthracite coal and was and is a potential and an actual competitor of the Lehigh & Wilkes-Barre Coal Company therein. Defendant denies that since 1903 the Lehigh & Susquehanna Railroad has been operated by the

109 Central Railroad Company of New Jersey on a basis of a division of the earnings threfrom or that the Central Railroad Company of New Jersey and the Lehigh Coal & Navigation Company are united in any close alliance or community of interest. From the execution of the supplemental agreement of 1883 down to the year 1901 the one-third of the gross receipts which, under the said lease and supplements, the Lehigh Coal & Navigation Company received as rental never exceeded $2,043,000.00, and the Lehigh Coal & Navigation Company during said period received the said one-third of said gross receipts as rental. In the year 1901, however, and again in the year 1903, and in every year thereafter, the one-third of the gross receipts from the Lehigh & Susquehanna Railroad exceeded $2,043,000.00 and the Lehigh Coal & Navigation Company during

said year received as rental the said sum of $2,043,000.00 plus seven per cent. (7%) on expenditures of the Lehigh Coal & Navigation Company since December 31st, 1882, for improvements and additions to the said line. Since the year 1903 one-third of the gross receipts of the said Lehigh & Susquehanna Railroad has exceeded the said maximum sum in each and every year, the said total revenues increasing from year to year, so that for the year 1912 the one-third of the said gross receipts exceeded the said maximum by the sum of $1,263,728.83.

Ninth. Defendant denies that the operation of the Lehigh & Susquehanna Railroad by the Central Railroad Company of New Jersey under the said agreement or otherwise violated the Act of Congress of July 2d, 1890, in any manner whatsoever, and denies that there has been created or now exists any alliance or community of interest between the Lehigh Coal & Navigation Company and the Central Railroad Company of New Jersey which is designed to suppress, or the probable effect of which is to suppress, competition between the Lehigh Coal & Navigation Company and the Lehigh & Wilkes-Barre Coal Company in the production
110 and sale of coal, and further avers that there is now and for a long time has been the most acute competition between the Lehigh Coal & Navigation Company and the Lehigh & Wilkes-Barre Coal Company in the sale of anthracite coal.

Tenth. Defendant denies that the said lease of 1871 and the supplements thereto or any covenant therein unduly or unreasonably restricts competition or commerce, and denies that the Lehigh or Delaware Division Canals, or either of them, are or could be made serious competitive factors in the transportation of anthracite coal from the Lehigh, Wyoming, or Schuylkill regions. Defendant further denies that it has any such interest in the operation of the Lehigh & Susquehanna Railroad as to render the transportation over the said railroad of coal mined by it a violation of the commodity clause of the interstate commerce act.

Eleventh. Defendant admits that it owns 500 shares of the stock of the Lehigh & Wilkes-Barre Coal Company out of a total authorized issue of 200,000 shares, having acquired said 500 shares from an individual pledgor, having formerly held the said shares as collateral for a loan of the said pledgor, on which the said pledgor defaulted in September, 1896, whereupon the said Lehigh Coal & Navigation Company caused the said shares to be offered at public sale and brought the same in for the amount of the said loan. Defendant denies that it has in any way acted in concert with the Central Railroad Company of New Jersey in the management of the Lehigh & Wilkes-Barre Coal Company in the suppression of competition. Defendant admits that it owns 83,920 shares out of a total of 90,000 shares of the Alliance Coal Mining Company, and denies that it has ever acted in concert with the Central Railroad Company of New Jersey for the suppression of competition in the sale of anthracite coal by means of the ownership of said shares.

111 Twelfth. Defendant admits that it purchased $507,900 of the capital stock of the Lehigh & Hudson River Railroad Company in 1885 and subsequent thereto, and that together with the Central Railroad Company of New Jersey and others, it guarantees the payment of $1,062,000 of the funded debt of the said Lehigh & Hudson River Railroad Company. Further, defendant admits that the vice president of the Lehigh Coal & Navigation Company is a director of the Lehigh & Hudson River Railroad Company and that a director of the Lehigh Coal & Navigation Company is president of the Lehigh & Hudson River Railroad Company. Defendant denies that of itself, or jointly with the Central Railroad Company of New Jersey, it exercises, directly or indirectly, any controlling influence over the policy and management of the Lehigh & Hudson River Railroad Company.

Thirteenth. Defendant admits that it is the owner of the entire capital stock of the Lehigh & New England Railroad Company and that the president, vice president, secretary, and certain of the directors of the Lehigh & New England Railroad Company occupy similar positions in the Lehigh Coal & Navigation Company. During the period prior to 1871, when the so-called Lehigh & Susquehanna Railroad was operated by the Lehigh Coal & Navigation Company, this company had acquired control of a line of railroad, known as the Lehigh & Lackawanna Railroad, extending from Bethlehem to Chapmans and later extended to Wind Gap. It subsequently acquired the Wind Gap & Delaware Railroad from Wind Gap to Pen Argyle, with branches to Saylorsburg and Bangor. The control of these roads by the Lehigh Coal & Navigation Company was acquired for the purpose of using them as feeders to bring the traffic of certain slate quarries to the Lehigh & Susquehanna Railroad. When the lease of 1871 was made to the Central Rail-
112 road, these two roads were not included and remained in the control of the Lehigh Coal & Navigation Company, being operated by the Central Railroad of New Jersey under short-term leases renewed from time to time down to 1905. In 1904 the Lehigh Coal & Navigation Company was desirous of increasing the traffic over these railroads by securing for them a connecting line with the New York, New Haven & Hartford Railroad into New England. At this time the Lehigh & New England Railroad, through the ownership of its line, the control of connecting lines and traffic arrangements over others, was operating a railroad from Slatington, Pennsylvania, to Campbell Hall, New York, connecting at Campbell Hall with roads running into New England and connecting at Bender's Junction, Pennsylvania, with the Lehigh & Lackawanna Railroad. With a view to extending the traffic over the Lehigh & Lackawanna and Delaware & Wind Gap railroads, the Lehigh Coal & Navigation Company in 1904 acquired the capital stock of the Lehigh & New England Railroad, and through such stock ownership effected a merger of the property of the Lehigh & Lackawanna and Delaware & Wind Gap railroads into the Lehigh & New Eng-

land Railroad. The Lehigh & New England Railroad, thus enlarged, connected with the line of the Central Railroad of New Jersey at Bethlehem Junction and with that of the Lehigh Valley Railroad at Slatington. The said Lehigh & New England Railroad further connects with the New York, New Haven & Hartford, the West Shore, the Erie, and the New York, Ontario and Western Railroad companies at Campbell Hall in the county of Orange and State of New York. It also connects with the Philadelphia and Reading Railway Company at Slatington, with the Pennsylvania Railroad Company at Martins Creek, with the Delaware, Lackawanna and Western Railroad at Portland, and with the New York, Susquehanna and Western Railroad at Hainesburg Junction, and in addition operates its trains under a trackage agreement over the lines of the New York, Susquehanna and West-
113 ern Railroad from Hainesburg Junction to New York tidewater. The Lehigh Coal & Navigation Company desired to secure a direct outlet for its coal from its mines in the Panther Creek Valley to New England points by way of the Lehigh & New England Railroad. After numerous fruitless endeavors to secure from the Central Railroad of New Jersey or from the Lehigh Valley Railroad, a suitable rate and traffic arrangement to form a connecting line with the Lehigh & New England at either of the points of connection with the Lehigh Valley or the Central, the Lehigh Coal & Navigation Company determined to secure, through its stock ownership in the Lehigh & New England Railroad, the construction of an extension of the Lehigh & New England Railroad to Tamaqua, connecting with the tracks of the so-called Panther Creek Railroad. This Tamaqua extension was commenced in 1911 and was completed in the summer of 1912. The reason for the construction of the said Tamaqua extension was to provide the means of transportation for securing an additional market for the coal from the Schuylkill and Lehigh regions and to provide a line of railroad which would compete in rates and facilities with the lines of the Lehigh Valley and Central Railroad Company of New Jersey and connections. The Lehigh & New England Railroad Company as so extended forms the most direct route from the Schuylkill and Lehigh coal regions to New England points.

The result of the extension of the Lehigh & New England Railroad to Tamaqua, as aforesaid, was to introduce a new competitive feature into the transportation situation in the Schuylkill and Lehigh regions, to stimulate railroad competition from said regions to points reached by the Lehigh & New England Railroad and its connections, and to make the shippers from said regions to such points no longer dependent for transportation facilities merely on the Central Railroad of New Jersey, the Philadelphia & Reading Railway Company, or the other carriers formerly serving said regions.

104 Fourteenth. This defendant admits that the said Lehigh & New England Railroad Company carries anthracite coal

mined by the Lehigh Coal & Navigation Company and owned by the Lehigh Coal & Navigation Company at the time of transportation, but denies that the said transportation constitutes a violation of any law.

Fifteenth. Defendant admits that the Lehigh & Hudson River Railroad Company and the Lehigh & New England Railroad Company compete for anthracite coal traffic to New England points. It avers that the said roads are not merely potentially, but actually, in competition for said transportation. Defendant denies that the common control of the said routes has been acquired or now rests in the navigation company and the Central Railroad Company of New Jersey by stock ownership or otherwise, and denies that there is between them any combination, contract, or arrangement in restraint of interstate trade and commerce of a monopolization of any part thereof in violation of the antitrust act in any manner whatsoever. Defendant further denies that there is any unity of ownership or management between it and the Lehigh & New England Railroad Company so as to render the transportation of the Lehigh Coal & Navigation Company's coal over the Lehigh & New England Railroad a violation of the commodities clause of the interstate commerce act and denies that the said companies are one and the same association of persons.

Sixteenth. Defendant denies that the Lehigh Canal has or might be made a practical competitive route of transportation from the anthracite coal fields to tide water. Defendant further denies that there is any community of interest between the Philadelphia & Reading Railway Company, the Philadelphia & Reading Coal & Iron Company, or the Reading Company and the Lehigh Coal & Navigation Company through directorships, through contracts, or otherwise.

105 Wherefore, this defendant, having fully answered, confessed, traversed, and avoided or denied all the matters in said bill of complaint material to be answered, according to the best knowledge and belief of this defendant, claims the same benefit from this its answer as if it had pleaded the several matters herein stated or any of them, or as if it had demurred to the said bill of complaint; and it humbly prays this honorable court to enter judgment that this defendant be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

THE LEHIGH COAL AND NAVIGATION COMPANY,
By S. W. WARRINER, *President.*

Attest:
ROBT. V. PIERCE, [SEAL.]
Assistant Secretary.

H. S. DRINKER, Jr.,
A. M. BEITLER,
JOHN G. JOHNSON,
Solicitors.

106 STATE OF PENNSYLVANIA,
County of Philadelphia, ss:

Robt. V. Pierce, being duly sworn, deposes and says: I am assistant secretary of the Lehigh Coal and Navigation Company, defendant named in the foregoing answer and making the same, and as such I have thereto duly affixed the corporate seal of the said company, and have attested the same by my signature. The said answer is true of my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to such matters I believe the said answer to be true. The source of my information and the grounds of my belief as to all matters not stated upon my own knowledge are the contents of the books and records of the defendant corporation, and communications made to me from time to time by the officers thereof and other individuals.

ROBT. V. PIERCE.

Sworn to before me this 18th day of October, A. D. 1913.

[SEAL.] WILLIAM M. KITZMILLER,
Notary Public.

Commission expires January 7, 1917.

107 In the District Court of the United States for the Eastern District of Pennsylvania.

September term, 1913. No. 1095. In Equity.

UNITED STATES OF AMERICA, PETITIONER,

vs.

THE READING COMPANY ET AL.

(Filed October 21, 1913.)

Answer of the Lehigh and New England Railroad Company to the petition of the United States of America as far as the same relates to this defendant.

This defendant, now and at all times hereafter, saving unto itself all and all manner of benefit of exception and otherwise, which can or may be taken to the manifold errors, uncertainties, and imperfections contained in the petition for answer thereto, or unto so much thereof as this defendant is advised, is material or necessary that it should answer, answering, says:

108 I. As to the first article of said petition, it admits that the Lehigh and New England Railroad Company is a corporation created and existing under the laws of the States of Pennsylvania and New Jersey, with its general office at Philadelphia, Pa., but it has no knowledge respecting the other averments in said arti-

cle, and prays that if same be material, complainant may make proof thereof.

II. In answer to the first paragraph of article 2, subsection 9, of said petition, your respondent admits that it was created a corporation on or about April 2d, 1895, under the general laws of Pennsylvania and New Jersey, having on or about said date, lawfully acquired the property and franchises theretofore of the Pennsylvania, Poughkeepsie and Boston Railroad Company, the latter company having on or about September 5th, 1887, lawfully acquired the said property and franchises at the foreclosure sale of the Pennsylvania, Slatington and New England Railroad Company, a corporation of the States of New Jersey and Pennsylvania, duly created in accordance with the laws of said States by the merger and consolidation of the property and franchises of the Pennsylvania and New England Railroad Company, which was incorporated under the name of the South Mountain and Boston Railroad Company, by the Legislature of New Jersey on March 13th, 1873, and the property and franchises of the Delaware and Slatington Railroad Company, which was incorporated under the provisions of the act of Assembly of the State of Pennsylvania, entitled "An act to authorize the formation and regulation of railroads," approved April 4th, 1868, and the supplements thereto; and your respondent further saith that its authorized capital stock is $7,500,000, of which amount $4,135,000 is issued and outstanding, that its funded debt is $3,650,000, and the amount of its equipment obligations $1,460,000.

As to the matters alleged in the second paragraph of article 2, subsection 9, of said petition, your respondent admits that it owns, leases, or operates, under other tenure, the several lines of rail-
109 road therein mentioned and that in addition thereto since July, 1912, under and by virtue of a trackage agreement with the New York, Susquehanna and Western Railroad Company it operates its engines, cars, and trains over the lines of the said company for the transportation of anthracite coal from the mines of the Lehigh Coal and Navigation Company to the New York tidewater terminal of said New York, Susquehanna and Western Railroad Company at Little Ferry, New Jersey, and that in addition thereto it also owns and operates a line of railroad serving the Lehigh, Bath, Nazareth, and Martins Creek cement regions, extending from a point near Bath in the county of Northampton and State of Pennsylvania, where it connects with the Delaware, Lackawanna and Western, and Northampton and Bath Railroad Companies, to a point of connection with the lines of the Pennsylvania Railroad at Martins Creek, in said county and State, as well as numerous other lines extending throughout Northampton County in said State, serving the slate and other industries in the Danielsville, Pen Argyl, and Bangor slate regions, and it also admits that of its freight tonnage, about twenty-five per cent thereof is anthracite coal.

As to the other matters alleged in article 2, it has no knowledge and asks that the plaintiff make proof thereof, if material.

III. In answer to subsection 3, article 3, your respondent denies that its lines or those of its predecessors were in operation in the anthracite fields as far back as 1870, and states that its said lines were not extended to said fields until July, 1912. It also denies that the transportation of anthracite coal by railroad at the rates now in effect is enormously profitable, at all events so far as it is concerned.

In answer to subsection 4, your respondent states that since July, 1912, the lines of the Lehigh and New England Railroad Company have reached New York tidewater, by reason of the trackage
110 agreement aforesaid with the New York, Susquehanna and Western Railroad Company.

As to the averments in said article, not herein answered, your respondent has no specific knowledge and asks that due proof thereof be made, if same are material.

IV. Your respondent has no knowledge of the allegations set forth in article 4 and if same are material, asks that due proof be made.

V. Your respondent has no knowledge of the allegations set forth in article 5 and if same are material, asks that due proof be made.

VI. Your respondent has no knowledge of the allegations set forth in article 6 and if same are material, asks tht due proof be made.

VII. Your respondent is advised of the existence of the several agreements set forth in article 7 between the Lehigh Coal and Navigation Company and the Central Railroad of New Jersey, but has no knowledge respecting the other allegations therein made, and if same are material, asks that due proof be made.

VIII. Your respondent in answer to the second and succeeding paragraphs of the eighth article, admits that it is controlled to the extent that the ownership of its shares constitutes control, by the Lehigh Coal and Navigation Company, which acquired its entire capital stock in 1904, since when your respondent's lines have been largely extended and improved, the most important extension constructed being that to the mines of the Lehigh Coal and Navigation Company, which has given said company larger and more extensive routes and facilities for the shipment of the output of its mines to market, and avers that said extension has enabled said Lehigh Coal and Navigation Company to ship the anthracite coal mined by it via a new and additional route to New York
111 tidewater, as well as to points reached via the lines of the Lehigh Valley Railroad and its connections, which were not available prior to the extension of your respondent's line to the mines of said Lehigh Coal and Navigation Company, and has opened up an additional route for the shipment of the output of its said mines to the slate and cement regions in Pennsylvania, as well as to upper New Jersey, New York, New England, and other points.

Your respondent denies that competition between the Lehigh and New England Railroad Company and the Lehigh and Hudson River Railway Company has been prevented by reason of the ownership of the capital stock of the Lehigh and New England Railroad Company by the Lehigh Coal and Navigation Company, but, on the contrary, avers that since the purchase of said stock by the Lehigh Coal and Navigation Company the competition between said lines has been greater than at any time in the history of said companies due, in large measure, to the fact that the Lehigh Coal and Navigation Company has supplied your respondent with the capital necessary to improve and extend its lines and to acquire the engines, cars, and other equipment necessary for effective competition with said company. Your respondent further avers that prior to the acquisition of its stock by the Lehigh Coal and Navigation Company, all coal shipments from the Lehigh and Schuylkill anthracite coal regions, destined to New England points via the Poughkeepsie bridge route were transported by the Lehigh and Hudson River Railway Company and that, as a result of the extension of your respondent's line to the mines of the Lehigh Coal and Navigation Company, a large proportion of such tonnage now moves via the Lehigh and New England Railroad Company to said points.

Your respondent denies that the said companies are under common control and avers that the controlling factors in the Lehigh and Hudson River Railway Company have no financial or other interest in the Lehigh and New England Railroad, nor voice or influence in the management and operation thereof.

112 Your respondent denies that the Lehigh Coal and Navigation Company's ownership of the capital stock of the Lehigh and New England Railroad Company violates the commodities clause of the act to regulate commerce or the act of July 2d, 1890.

As to matters not herein answered, your respondent has no knowledge, and prays that proof may be made thereof, if material.

IX. In answer to the ninth article, your respondent avers that it is a competitor of the Central Railroad of New Jersey and other lines in the transportation of anthracite coal and other commodities to New York tidewater, to New England, and other points, and that for many years it has been engaged in the prosecution and enlargement of its business to the greatest extent possible. It has no agreement with the Central Railroad of New Jersey, or any other line, whereby its tonnage is restricted or its field of operations limited. Since its incorporation, and particularly since 1900, it has constantly and continually extended its lines of railroad and increased its usefulness as a common carrier, thereby affording better and greater shipping facilities to its patrons and to the public generally, in the territory in which its operations are conducted. It has opened up to the Lehigh Coal and Navigation Company and its other patrons and to the public generally, additional avenues of communication to New York tidewater and to points in New York, New England,

and the West, and has in all respects conducted its operations as a common carrier fairly and without discrimination.

Your respondent further avers that the continuance of the present status of the Lehigh and New England Railroad, as an independent common carrier, is vital to the welfare of the Lehigh Coal and Navigation Company and to the enormous cement, slate, and other industries served by it, and that any interference therewith would in all probability result eventually in your respondent's railroads passing into the control of other interests more or less competitive
113 therewith and antagonistic to the development thereof, and the territory now served by your respondent's lines.

As to the other averments in said article nine, your respondent has no knowledge, and asks that due proof be made thereof, if material.

X. Your respondent denies that it has committed any act in violation of the commodities clause of the act to regulate commerce or in violation of the provisions of the act of July 2d, 1890.

Wherefore, this defendant, having fully answered, confessed, traversed, and avoided or denied all the matters in said petition material to be answered, according to the best knowledge and belief of this defendant, claims the same benefit from this its answer as if it had pleaded the several matters herein stated or any of them, or as if it had demurred to said petition; and it humbly prays this honorable court to enter judgment that this defendant be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

LEHIGH AND NEW ENGLAND RAILROAD COMPANY,
(Sgd.) By S. D. WARRINER, *President.*

Attest:
(Sgd.) H. F. BAKER,
Secretary.

WM. JAY TURNER, [SEAL.]
JOHN G. JOHNSON,
Solicitors.

114 STATE OF PENNSYLVANIA,
County of Philadelphia, ss:

H. F. Baker, being duly sworn, deposes and says: I am Secretary of the Lehigh and New England Railroad Company, defendant named in the foregoing answer and making the same, and as such I have thereto duly affixed the corporate seal of the said company, and have attested the same by my signature. The said answer is true of my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as such matters, I believe the said answer to be true. The source of my information and the grounds of my belief as to all matters not stated upon my own knowledge, are the contents of the books and records of the defend-

ant corporation, and communications made to me from time to time by officers thereof and other individuals.

(Sgd.) H. F. BAKER.

Sworn to before me this twenty-first day of October, A. D. 1913.
[SEAL.] (Sgd.) A. E. MAHAN,
Notary Public.

Commission expires March 10, 1917.

115 In the District Court of the United States for the Eastern District of Pennsylvania.

September term, 1913. No. 1095. In Equity.

THE UNITED STATES OF AMERICA, PETITIONER,
vs.
READING COMPANY, PHILADELPHIA AND READING RAILWAY COMPANY, ET AL., DEFENDANTS.

(Filed October 22, 1913.)

The separate answer of Wilmington and Northern Railroad Company.

This defendant, now and at all times hereafter reserving unto itself all and all manner of benefit of exception and otherwise which can or may be had or taken to the manifold errors, uncertainties, and imperfections in the said petition contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer unto, answering says:

I.

116 In respect of the allegation of the petition relating to it, admits:

1. That it became a corporation in 1877; that it was the result of a consolidation of "The Wilmington and Northern Railroad Company," of Delaware, and "Wilmington and Northern Railroad Company," of Pennsylvania; that both these companies were organized in 1877, by, or in behalf of, the purchasers at a sale, in December, 1876, had under foreclosure proceedings, of all the property of "Wilmington and Reading Railroad Company," in both Pennsylvania and Delaware and the franchises thereof in Pennsylvania; that the first mentioned company was incorporated by a special act of the General Assembly of Delaware, approved February 22d, 1877 (Del. L., 1877, page 519), and the second under the general laws of Pennsylvania relating to reorganizations by purchasers of rail-

road property and franchises at judicial sale; that "Wilmington and Reading Railroad Company" was itself the result of a consolidation in 1866 of two railroad companies, one of Delaware, afterwards named "The Delaware and State Line Railroad Company," which was authorized to build a railroad from Wilmington to the line of that State in the direction of Parkesburg, Pennsylvania, and the other of Pennsylvania, which was incorporated under a special act of the General Assembly of Pennsylvania, approved April 20th, 1864 (P. L., 525), for the specific purpose of constructing "a railroad from a point on the Philadelphia and Reading Railroad, at or near Birdsboro, in Berks County," and thence to connect with any railroad or railroads then built in the county of Chester, and which afterwards, by an act of said general assembly of March 16th, 1866 (P. L., 209), was authorized to connect its railroad with that of said "The Delaware and Pennsylvania State Line Railroad Company," and, at any time, to consolidate therewith; that this defendant's capital stock issued and outstanding amounts to $1,500,000 divided into shares of $50 each and its funded debt is $887,500.

117 2. It admits that, since prior to 1898, it has owned a railroad extending from Wilmington, Delaware, through Coatesville and Birdsboro, Pennsylvania, a distance of about 71.50 miles to Highs Junction, a point several miles south of Reading.

It admits that at one time it had by contract a qualified right to operate trains over a line—operated since 1896 by Philadelphia and Reading Railway Company—extending from Highs Junction a distance of about 3.52 miles to Reading. But it avers that said right was exercised in pursuance of an agreement of May 16th, 1879, made by and between this defendant and the Philadelphia and Reading Railroad Company, and that said agreement was among those which Messrs. Coster and Stetson, the purchasers of the property and franchises formerly of said last-mentioned company, elected not to assume or adopt, notice to which effect was sent this defendant on November 11th, 1896.

And it avers that this company's line does not, and did not, connect at Reading, or in that vicinity, with the lines of the Pennsylvania Railroad Company.

3. It admits that, until about February 1st, 1900, it operated its line from Highs Junction to Wilmington, Delaware, and, under a temporary arrangement, from Reading, through Highs Junction, to Wilmington, Delaware.

4. It admits that, in 1898, a majority of its capital stock was acquired by Reading Company.

5. It admits that, on or about February 1st, 1900, its lines were leased to Philadelphia and Reading Railway Company and that, continuously since that time, said railway company has operated these lines.

II.

In respect of the allegations of the petition relating to the other defendants, except as herein admitted or denied, it has not
118 sufficient knowledge or information to form a belief and, therefore, asks that strict proof thereof be required, if deemed material.

III.

In respect of the allegations of the petition relating to it, other than those herein admitted or alleged to be true, it denies each and every one of the same, and it specifically denies:

1. That, during most of the time, or any substantial part of the time, during which this defendant operated its line, anthracite constituted its principal freight.

It avers, on the contrary, that anthracite has been, and was, a comparatively small part of its freight and that its principal freight generally consisted, and now consists, of iron and steel and the raw materials entering into the manufacture thereof, and next to these agricultural and dairy products.

2. It denies that, in any practical sense of the words, competition, competitor, or competitive, or in any sense thereof that would make a joint ownership of the lines of this defendant and existing lines of Philadelphia and Reading Railway Company obnoxious to existing law (1) prior to 1898, this defendant was transporting, in interstate commerce, passengers or freight in competition with Philadelphia and Reading Railway; or (2) that, since prior to 1901, or at any time, it has been a potential competitor of said railway company in the interstate transportation of anthracite or any other freight; or (3) that the railroad of this defendant and its connections, and the lines of said railway company now constitute, or they have at any time constituted, potentially competitive routes of transportation from the anthracite fields, or any part thereof, to tidewater at the head of Delaware Bay.

It avers that, on the contrary, the line of this defendant is, and has always been, a connecting line with those now owned by
119 Philadelphia and Reading Railway; that the Pennsylvania part of its line was built for a company that was specially incorporated to build a line to connect with the line of the predecessor of said railway company at Birdsboro, a point on said predecessor's main line; and that the line of this defendant is, and always has been, a line supplementary to those now owned by said railway company, the two forming a natural, direct, through route for the transportation of commerce and the accommodation of shippers from points on the lines of either to destination points on the lines of the other, and that the continued maintenance of such natural, direct, through route, instead of tending to restrain trade and com-

merce in any way aids and facilitates the same in precise conformity to the spirit and purpose of the act to regulate commerce.

3. It denies that the acquistion in 1898 by Reading Company of a majority of the capital stock of this defendant either effected, or had any tendency to accomplish, any monopolization of the ownership, production, sale or transportation of anthracite in or from the Schuylkill region, or to continue any such monopolization.

4. It denies that said Reading Company's power to direct the votes upon a majority of the shares of the capital stock of this defendant at the meetings of shareholders at which the president and directors of this defendant are elected, and upon a large majority of the shares of the capital stock of Philadelphia and Reading Railway Company at similar meetings of the latter's shareholders, together with the lease of the lines of this defendant to said railway company on or about February 1st, 1900, constitute a combination in restraint of trade and commerce or a monopolization of any part thereof, in violation of the act of Congress of July 2d, 1890, or of any other law.

5. It denies that, by, or by means of, the acquisition by Reading Company of any stock or any interest, alleged or charged in
120 said petition, there was effected or exists, in violation of any law or otherwise, any confederation or combination of Philadelphia and Reading Railway Company, the Central Railroad Company of New Jersey and this defendant, with Lehigh and Hudson River Railway or with the latter and Lehigh and New England Railroad Company.

6. It denies that it is a party, directly or indirectly, to any agreement, contract, combination, or conspiracy, by virtue of which it, either alone or in combination with the other defendants or any of them, or otherwise, has acquired the power now or hereafter to control, regulate, restrain, or monopolize, or by virtue of which it, either alone or in such combination does control, regulate, restrain, or monopolize, either the production of anthracite or its transportation from the mines in Pennsylvania to market points in other States, or its price or sale in or throughout other States.

IV.

For a further and separate answer it alleges:—

1. That it appears by this petition that this suit is brought against it and the other corporations and persons named as defendants therein for distinct matters and causes, in some of which this defendant is not interested or concerned, and that the petition, therefore, is multifarious.

2. That it appears by the petition that this suit is brought against it and the other corporations and persons named as defendants therein for distinct matters and causes, in some of which other defendants are not in any manner interested or concerned, and in

respect thereof this suit can proceed against it to hearing and decree without the presence of said defendants, wherefore the petition is multifarious.

121 Wherefore, this defendant prays that the petition be dismissed as against it with costs.

WILMINGTON AND NORTHERN RAILROAD COMPANY,
By E. B. SHURTER, *Secretary.*

CHARLES HEEBNER, [SEAL.]
Solicitor for Defendant.

122 In the District Court of the United States for the Eastern District of Pennsylvania.

September term, 1913. No. 1095. In Equity.

THE UNITED STATES OF AMERICA, PETITIONER,
vs.
READING COMPANY, PHILADELPHIA AND READING RAILWAY COMPANY, ET AL., DEFENDANTS.

(Filed October 22, 1913.)

The separate answer of the Reading Company.

This defendant, now and at all times hereafter reserving unto itself all and all manner of benefit of exception and otherwise which can or may be had or taken to the manifold errors, uncertainties, and imperfections in the said petition contained, for answer thereto, or to *to* so much thereof as this defendant is advised it is material or necessary for it to make answer unto, answering says:

I.

123 In respect of the allegations of the petition relating to it, it admits:

1. That it was created a corporation under the name "Excelsior Enterprise Company," by a special act of the General Assembly of Pennsylvania, approved May 24th, 1871 (P. L., page 1089); that that act conferred upon it the same rights, powers, privileges, franchises, and immunities as are conferred in and by an act of the General Assembly of Pennsylvania entitled "An act to incorporate the Pennsylvania Company," approved April 7th, 1870 (P. L., page 025), among which was and is the right to have a capital stock of $100,000 "with the privilege of increasing the same, by a vote of the holders of a majority of the stock present at any annual or special meeting, to such an amount as they may from time to time deem needful;" that in 1873 its name was duly changed to "The National Company," and on December 7th, 1896, to "Reading Company;" that,

on November 6th, 1896, its authorized capital stock was duly increased from $50,000 to $40,000,000, and on December 18th, 1896, from $40,000,000 to $140,000,000, divided into 2,800,000 shares of $50 each, $28,000,000 of this being first preferred, $42,000,000 second preferred, and $70,000,000 common stock, all of which is issued and outstanding; and that its funded debt is about $130,000,000.

2. That the entire then outstanding capital stock of this company was among the assets of the Philadelphia and Reading Railroad Company which on September 23d, 1896, were sold by the receivers of the property of that company, and that of the Philadelphia and Reading Coal and Iron Company, at public sale, duly had in pursuance of a decree of the Circuit Court of the United States for the Eastern District of Pennsylvania, made and entered in the foreclosure suit brought in that court (to April term, 1895, No. 9, in equity), against said companies by the trustee in a certain
124 mortgage executed by them dated January 3d, 1888, and at said sale was purchased by the same parties who, at the trustee's sale had the same day and under the same decree, purchased the property of said railroad and said coal and iron company covered by said mortgage; that this company had not been in active business for some years immediately prior to said sale; that shortly thereafter there were transferred and conveyed to this company substantially the entire capital stocks of Philadelphia and Reading Railway Company and of the Philadelphia and Reading Coal and Iron Company, the entire purchase money mortgage debt of the former—$20,000,000 in one bond—and all other property acquired by said purchasers at said trustee's and at said receivers' sales, which were not by or in behalf of said purchasers conveyed to either Philadelphia and Reading Railway Company or the Philadelphia and Reading Coal and Iron Company; and that included in the property so conveyed to this company were the marine equipment and rolling stock formerly of said railroad company, and almost the entire capital stock and debt of the Schuylkill Navigation Company, formerly held by said railroad company; that in consideration of the conveyance to it of said property, securities, and assets, this company, in addition to assuming certain liabilities, delivered certificates for $139,950,000 of its $140,000,000 capital stock and also $50,369,000 general mortgage bonds, being bonds of an authorized issue of $135,000,000 payable January 1st, 1997, with interest payable semi-annually at the rate of four per cent. per annum, secured by a mortgage and deed of trust to Central Trust Company of New York, dated January 5th, 1897, executed by both this company and said coal and iron company and covering substantially all of the property of both except certain stocks and bonds; that by the terms of said mortgage of this authorized issue of $135,000,000 general mortgage bonds, bonds to the amount of $64,631,000 were reserved for the purpose of providing for the acquisition by purchase or exchange or for the redemption as provided in said mortgage of (1) outstanding

bonds of said railroad company for principal sums amounting to $50,968,277, and (2) of ground rents and bonds of said
125 railroad company secured by mortgage on real estate $1,612,063, and (3) divisional coal land bonds of said coal and iron company, the principal sums of which outstanding on January 1st, 1897, amounted to $12,050,606, and the remaining $20,000,00 of said authorized issue wehe reserved and have been used for one of more of the following purposes, viz, (a) the acquisition of additional shares of stock of Philadelphia and Reading Railway Company and of additional bonds of said railway company to be issued under the latter company's mortgage of November 18th, 1896, (b) for the acquisition or betterment of property upon, along, or appurtenant to properties of one or the other of the mortgagors in said general mortgage, and subject to the lien of said mortgage at the time of such use of the bonds, or upon, along, or appurtenant to lines of railway or terminal properties of some one or more of the other companies mentioned in said general mortgage more than one-half of whose capital stock was pledged in said mortgage, or of some other company of whose capital stock more than one-half, at the time of such use of the bonds, should be pledged under said mortgage, and (c) to reimburse the Reading Company for outlays or advances by it made for, or to promote, any construction or acquisition made pursuant to (a) or (b) on or subsequently to January 1st, 1897; that by the provisions of said general mortgage, the said mortgagors therein undertake punctually and regularly to pay or cause to be paid the interest on all the therein specified bonds of both said railroad company and said coal and iron company for the purchase, exchange, or redemption of which the said $64,631,000 bonds of said authorized issue of $135,000,000 were reserved by the terms of said general mortgage, until such bonds should be paid and discharged or acquired and pledged under said general mortgage; that in 1897 the person who was duly elected president of this company was the same person who, in that year, was duly elected president of said railway company and in the same year was duly elected president of said
126 coal and iron company and that in that year the person who was duly made treasurer of this company was the same person who, in that year, was duly made treasurer of said railway company, and in the same year duly made treasurer of the said coal and iron company; that of the persons who, in 1897—after said transfer of property to this company—constituted the duly elected directors of said railway company, a majority were the same persons as those who constituted a majority of the duly elected directors of said coal and iron company, and the same persons were also that year directors of this company; and this is true of every successive year since that date; that the defendant George F. Baer is president of this company, president of said railway company, and president of said coal and iron company; that the defendants George F. Baer, George F. Baker, Edward T. Stotesbury, Henry

C. Frick, Peter A. B. Widener, Henry A. duPont, Daniel Willard, Henry P. McKean, and Samuel Dickson now constitute the board of directors of this company, said Baker, Stotesbury, Frick, Widener, Willard, and duPont now constitute the board of managers of said railway company, and said Baker, Stotesbury, Frick, Widener, Willard, and McKean constitute the board of directors of said coal and iron company; that the general offices of these three companies, respectively, are in the same building in Philadelphia, and that their respective annual reports showing the results of their respective operations are published in the same pamphlet.

3. That all the equipment acquired since 1898 for use on the lines of said railway company has been acquired and paid for by Reading Company and is pledged under the said general mortgage.

4. That, by the terms of said general mortgage of January 5th, 1897, it is provided that, if the company shall use any of the hereinbefore referred to remaining $20,000,000 bonds of said authorized issue of $135,000,000, for the purpose of acquiring additional
127 shares of stock of said railway company and of additional bonds of said railway company to be issued under the latter's mortgage dated November 18th, 1896, the certificates for all shares of stock so acquired shall be duly transferred into the name of the trustee under said general mortgage and, if practicable, any bonds so acquired shall be transferred in like manner, or, if not susceptible of such transfer, shall be plainly endorsed as the property of the trustee thereunder.

That it is also provided by the terms of said general mortgage that this company shall not in any year declare or pay dividends upon its stock until or unless, prior to, or simultaneously with, such declaration, it shall deliver to the trustee under said mortgage a statement in writing under its corporate seal showing the amount of anthracite coal mined from lands owned by said coal and iron company and covered by said general mortgage, during the year next preceding the declaration of such dividend, and simultaneously shall pay to such trustee a sum equal to five cents per ton on all coal so mined in such next preceding year, if the aggregate of dividends so declared shall be equal to or shall exceed such sum, and otherwise such lesser sum as shall be equal to the aggregate of dividends so declared.

5. That, since the acquisition by this company, in 1896, of the capital stock of said coal and iron company, this defendant has, from time to time, made to said coal and iron company certain temporary commercial loans of the character of those which large business enterprises commonly obtain during months of production prior to sale of product, but these temporary loans have been usually repaid by said coal and iron company, with interest, within a few months after their making.

This defendant avers that the advance of about $12,000,000 alleged to have been made by it to said coal and iron company referred to in said petition and carried on the books of this defendant in its open

account against said coal and iron company, was for the amounts from time to time used in discharging prior liens on the prop-
128 erty of said coal and iron company, generally known as divisional coal land bonds, and that these amounts were obtained from the sale of a part of the $64,631,000 bonds specifically reserved for this and other purposes, by section 3 of article 1 of the said general mortgage of January 5th, 1897, of this defendant and said coal and iron company.

6. That there is carried on the books of this defendant, in an open account with said coal and iron company, the amount—less certain deductions—of that company's debt to the Philadelphia and Reading Railroad Company and its receivers as it stood on November 18th, 1896—amounting at that time to about $69,000,000—together with the above-mentioned accretion; that, on account of interest, other than interest on commercial loans, it has received from the said coal and iron company only the following amounts:

In 1900	$884,850.18
" 1901	886,504.62
" 1902	888,780.61
" 1903	1,582,334.41
" 1904	1,582,477.77
" 1905	1,582,255.21
" 1906	1,583,304.53
" 1907	1,583,914.05
" 1908	1,584,485.40
" 1909	935,003.19
" 1910	743,957.87
" 1911	320,000.00
" 1912	810,998.97
" 1913	2,269,405.15

7. That this company has always paid the interest on the from-time-to-time outstanding bonds issued under said general mortgage of January 5th, 1897.

8. That, in 1898, it acquired a majority of the capital stock of Wilmington and Northern Railroad Company.

129 9. That the Supreme Court of the United States, in the case of the United States vs. Reading Company et al. (226 U. S., 324), in accordance with its opinion in said matter filed, affirmed the adjudication of the Circuit Court of the United States for the Eastern District of Pennsylvania in respect of the so-called Temple Iron Company combination.

10. That, continuously since December, 1896, this company has owned nearly the entire capital stock of the Schuylkill Navigation Company and that, by virtue of such ownership, it can direct the vote upon its share ownership at the meetings of shareholders at which the managers of said Navigation Company are from time to time elected.

It admits that, having in 1898 acquired a majority of the capital stock of Wilmington and Northern Railroad Company, continuously since March 1st, 1900, it has been the owner of an equitable or beneficial interest in 29,785 shares of the capital stock of said railroad

company—being nearly the entire capital stock thereof—subject to the terms, conditions, and provisions of a certain agreement, dated March 1st, 1900, between this defendant, said railroad company, and the Girard Trust Company, trustee, in pursuance of which said 29,785 shares were transferred and delivered to, and are still held by said trustee in trust for the benefit of the holders of certain stock trust certificates issued by said trustee, of which 1,295 for the amount of $1,000 each have been issued and are still outstanding; and that, in accordance with the provisions of said agreement and except as restricted hereby, this defendant can direct the vote upon said shares at the meetings of shareholders at which the directors of said railroad company are from time to time elected.

It admits also that, continuously since December, 1896, it has been the owner of an equitable or beneficial interest—subject to the liens and pledges set forth in the general mortgage of January 5th, 1897, hereinabove referred to—of almost the entire capital stock of
130 Philadelphia and Reading Railway Company and almost the entire capital stock of the Philadelphia and Reading Coal and Iron Company and that, in accordance with the provisions of said general mortgage and except as restricted thereby, it can direct the vote upon said shares of stock at the respective meetings of share holders at which the president and managers or directors of said respective companies are from time to time elected.

It admits also that in January, 1901, it agreed to purchase from the owners and holders thereof 145,000 shares of the capital stock of the Central Railroad Company of New Jersey—being a majority of the shares of said railroad company—and that these shares were afterwards transferred to this defendant in consideration, among other things, of the execution by it of a certain purchase money collateral indenture to secure an issue of bonds for the aggregate principal sum of $23,000,000; whereupon this defendant, in order to secure the payment of the principal and interest of all such bonds as should at any time be issued and outstanding thereunder, under date of April 1st, 1901, made, executed, and delivered to the Pennsylvania Company for insurances on lives and granting annuities, a corporation of Pennsylvania, as trustee, a purchase-money collateral indenture, and assigned, transferred, and pledged to said Pennsylvania Company, as trustee, among other things, the said 145,000 shares of stock; that, upon the execution of said indenture, a certificate or certificates of the Central Railroad Company of New Jersey were issued and registered upon the books of said railroad company in the name of said the Pennsylvania Company for insurances on lives and granting annuities, as trustee, which were then and there delivered to said trustee which still remains the owner and holder thereof, under the trusts set forth in said indenture; that there were then issued, and now remains outstanding and unpaid in the hands of the public $23,000,000 in amount of the bonds of this defendant, the payment of the principal and interest, whereof

131 is secured by said assignment, transfer, pledge, and deposit of said certificate or certificates representing said 145,000 shares of the capital stock of said railroad company.

It admits that, continuously since April 1st, 1901, it has been, and still is, the owner of an equitable or beneficial interest—subject to the liens and pledges set forth in said purchase money collateral indenture in said 145,000 shares of stock, and that, in accordance with the provisions of said indenture and except as restricted thereby, it receives the divididends from time to time accruing thereon and can direct the vote upon said shares of stock at the meeting of shareholders at which the managers or directors thereof are elected.

It admits that the defendant, George F. Baer, was elected president of the Central Railroad Company of New Jersey not long after the acquisition of said shares by this defendant and has been elected such president every successive year since that time.

It also admits that at present Messrs. Baer, Baker, and Stotesbury, directors of this defendant, are directors of the Central Railroad Company of New Jersey.

II.

In respect of the allegations of the petition relating to Philadelphia and Reading Railway Company, the Philadelphia and Reading Coal and Iron Company, Wilmington and Northern Railroad Company, the Central Railroad Company of New Jersey, and the Lehigh and Wilkes-Barre Coal Company, it refers to the respective answers of these companies which have been exhibited to it, hereby, on information and belief, admitting all that is therein admitted and not herein denied, denying all that is therein denied and not herein admitted, and alleging to be true all that is therein alleged to be true and not herein denied.

III.

In respect of the allegations of the petition relating to the other
132 defendants and others, except as herein or hereby admitted mitted or denied, it has not sufficient knowledge or information to form a belief, and, therefore, asks that full proof thereof be required if deemed material.

IV.

In respect of the allegations of the petition relating to it, other than those herein or hereby admitted or alleged to be true, it denies each and every one of the same, and it specifically denies:

1. That this company, either in 1896 or at any other time, was made—either by the reorganizers of the properties and business of the Philadelphia and Reading Railroad Company and those of the Philadelphia and Reading Coal and Iron Company, or by any other persons or parties—an instrument to accomplish any unlawful or

improper purpose or to accomplish a lawful purpose in an unlawful or improper way.

It avers that the plan for the reorganization in 1896 of the business and properties of the said companies was prepared and promulgated with the purpose of saving and conserving large investments of the public, which were made in reliance upon the laws of the land, made in compliance with those laws and made in the promotion and furtherance of praiseworthy enterprises, beneficial to the public, and stimulated, fostered, and encouraged by those laws; and that said plan was prepared and promulgated with a view to the continuity of those several enterprises and to their healthy and hearty growth and development; and that said plan was prepared and carried into execution, relying on the law of the State of Pennsylvania as well as that of the United States that "it is not an illegal evasion to accomplish a desired result, lawful in itself, by discovering a legal way to do the thing desired."

2. It denies that this company, Philadelphia and Reading Railway Company and the Philadelphia and Reading Coal and
133 Iron Company are one and the same association of persons engaged in mining, selling, and transporting coal, or in any one of these lines of business or otherwise, either under the direction of any of the persons mentioned in said petition or otherwise.

3. It denies that any of the acts or arrangements in said petition charged as having been made by the Philadelphia and Reading Railroad Company through the instrumentality of the Philadelphia and Reading Coal and Iron Company were illegal when made, and denies that they constituted or effected any unlawful combination or monopolization.

And it denies that this defendant, by acquiring both the capital stock of Philadelphia and Reading Railway Company and of said coal and iron company, succeeded to any monopolization of the ownership or production of anthracite in the Schuylkill region or of the transportation or sale thereof amongst the States, or that that acquisition effected any such monopolization.

And it denies that its exercise of the power to direct the votes upon a large majority of the shares of the capital stock of said railway company at the meetings of shareholders at which the president and directors of said company are elected, and upon a large majority of the shares of the capital stock of said coal and iron company at similar meetings of the latter's shareholders, constitutes a combination in restraint of interstate trade and commerce or a monopolization of any part thereof, in violation of the act of Congress of July 2d, 1890, or of any other law.

4. It denies that the lease and sale, made under date of July 12th, 1870, by Schuylkill Navigation Company to the Philadelphia and Reading Railroad Company, was in any sense a combination in restraint of interstate trade or commerce or a monopolization thereof within the meaning of said act of July 2d, 1890, or otherwise, or that

it effected or tended to effect such a combination, such restraint or such monopolization.

134 And it denies that, by the vesting in this defendant of substantially all the capital stock of said Schuylkill Navigation Company any such combination, restraint, or monopolization has been continued or effected.

5. It denies that the action of this defendant in refraining from exacting from said coal and iron company an equitable or beneficial interest, subject to certain liens and pledges, in substantially all the capital stock of which is held by this defendant, prompt or present payment of an amount equal to one-half the interest paid on the from time-to-time outstanding bonds issued under said general mortgage and for which both it and this defendant are primarily liable to the bondholder; or in refraining from collecting, year by year, from said coal and iron company, on account of interest, more than that company has paid as hereinbefore set forth; or any of its acts in respect of said coal and iron company or actions toward it or in its behalf constitute unlawful discrimination against any other shipper along the line of said railway company, or increase, or tend to increase, any power of said coal and iron company over any competitor of the latter, or secure or promote, or tend to secure or promote, any monopolization of the ownership, prduction or sale of anthracite, by said coal and iron company or by this defendant in violation of any law or otherwise.

7. It denies that prior to 1898 the Wilmington and Northern Railroad Company was transporting, in interstate commerce, passengers or freight in competition with Philadelphia and Reading Railway Company; that since prior to 1901, or at any time, said railroad company has been a potential competitor of said railway company in the interstate transportation of anthracite or any other freight; that the railroad of said railroad company and its connections, and the lines of said railway company, do now constitute, or that they have at any time constituted, potentially competi-

135 tive routes of transportation from the anthracite fields, or any part thereof, to tidewater at the head of Delaware Bay.

And it denies that the acquisition in 1898 by this defendant of a majority of the capital stock of said railroad company either effected, or had any tendency to effect, any monopolization of the ownership, production, sale, or transportation of anthracite in or from the Schuylkill region, or to continue any such monopolization.

And it denies that its exercise of the power to direct the votes upon a majority of the shares of the capital stock of said railroad company at the meetings of shareholders at which the president and directors of said company are elected, and upon a large majority of the shares of the capital stock of said railway company at similar meetings of the latter's shareholders, together with the lease of the lines of said railroad company to said railway company on or

about February 1st, 1900, constitute a combination in restraint of trade and commerce or a monopolization of any part thereof in violation of the act of Congress of July 2d, 1890, or of any other law.

8. It denies that any purchases or purchase of anthracite, now or heretofore made, by the Philadelphia and Reading Coal and Iron Company are or were made in furtherance of any monopolization of the ownership, production, sale, or transportation of anthracite acquired, held, or directed by this defendant.

9. It denies that this defendant has at any time monopolized the production or transportation of anthracite in and from the Schuylkill region.

It denies that the purchase by it in 1901 of a majority of the shares of the capital stock of the Central Railroad Company of New Jersey was made in any attempt to extend into any other anthracite region any power of the so-called Reading system, or with the purpose or effect of restricting competition in the production of anthracite or in the shipment, sale, or transportation
136 thereof amongst the States; and it denies that such acquisition has had, or that it tends to produce, any such effect.

It denies that the Philadelphia and Reading Railway Company operates lines parallel or competing in interstate commerce with those of the Central Railroad Company of New Jersey, or with those formerly operated by Wilmington and Northern Railroad Company.

It denies that, by such acquisition, this defendant became a party to any alliance or community of interest between the Central Railroad Company of New Jersey and the Lehigh Coal and Navigation Company, and denies that any contract relation between these two latter companies violates the act of Congress of July 2d, 1890.

It denies that, by or by reason of, such acquisition or otherwise there was effected or exists, in violation of any law, or otherwise, any confederation or combination of either—

(a) The coal businesses of the Philadelphia and Reading Coal and Iron Company, the Lehigh and Wilkes-Barre Coal Company and the Lehigh Coal and Navigation Company;

(b) The Philadelphia and Reading Railway Company, the Central Railroad Company of New Jersey, and Wilmington and Northern Railroad Company with Lehigh and Hudson River Railway Company or with the latter and Lehigh and New England Railroad Company;

(c) The canal owned by Schuylkill Navigation Company and the canal operated by the Lehigh Coal and Navigation Company.

And it denies that the said acquisition by this company, or the continued ownership by it of an equitable or beneficial interest—subject to the lien and pledge hereinbefore mentioned—in a majority of the capital stock of the Central Railroad Company of New Jersey constitutes in any sense a combination in restraint of interstate trade and commerce or a monopolization of a part thereof, in violation of the said act of Congress of July 2d, 1890, or otherwise.

137 And this defendant avers that the purchase of these shares of the capital stock of the Central Railroad Company of New Jersey was made by this defendant in the normal and natural course of lawful business development, the system of railroads of said company and those of Philadelphia and Reading Railway Company and the latter's predecessor being, and for more than forty years having been, connecting lines of railroad supplementing each other in the formation of through routes for the transportation of the commerce of the country, each forming the essential and necessary outlet for the interstate and foreign traffic carried by the other in cases where the destination of the traffic is beyond the lines of the system on which it originates, the continued maintenance of which through routes, instead of tending to hinder or restrain trade or commerce amongst the several States or with foreign nations, being of vast importance in aiding and facilitating the same in precise conformity to the spirit and purpose of the act to regulate commerce.

10. It denies that it is a party, directly or indirectly, to any agreement, contract, combination or conspiracy, by virtue of which it, either alone or in combination with the other defendants or any of them, or otherwise, has acquired the power now or hereafter to control, regulate, restrain or monopolize, or by virtue of which it, either alone or in such combination, does control, regulate, restrain, or monopolize, either the production of anthracite, or its transportation from the mines in Pennsylvania to market points in other States, or its price or sale in or throughout other States.

V.

For a further and separate answer it alleges:

1. That it appears by the petition that this suit is brought against it and the other corporations and persons named as defend-
138 ants therein, for distinct matters and causes, in some of which this defendant is not interested or concerned, and that the petition, therefore, is multifarious.

2. That it appears by the petition that this suit is brought against it and the other corporations and persons named as defendants therein for distinct matters and causes, in some of which other defendants are not in any manner interested or concerned, and in respect thereof this suit can proceed against it to hearing and decree without the presence of said defendants; wherefore the petition is multifarious.

Wherefore this defendant prays that the petition be dismissed as against it with costs.

READING COMPANY,
By J. V. HARE, *Secretary*.

CHARLES HEEBNER, [SEAL.]
Solicitor for Defendant.

129 In the District Court of the United States for the Eastern District of Pennsylvania.

September term, 1913. No. 1095. In Equity.

THE UNITED STATES OF AMERICA, PETITIONER,
vs.
READING COMPANY, PHILADELPHIA AND READING RAILWAY COMPANY, ET AL., DEFENDANTS.

(Filed October 22, 1913.)

The separate answer of the Philadelphia and Reading Coal and Iron Company.

This defendant, now and at all times hereafter reserving unto itself all and all manner of benefit of exception and otherwise which can or may be had or taken to the manifold errors, uncertainties, and imperfections in the said petition contained for answer thereto or to so much thereof as this defendant is advised it is material or necessary for it to make answer unto, answering says:

140 I.

In respect of the allegations of the petition relating to it, it admits:

1. That it was created a corporation, under the name of "Laurel Run Improvement Company," by a special act of the General Assembly of Pennsylvania, approved May 18th, 1871 (P. L., 915); that its original name was changed to its present name on December 12th, 1871; that its capital stock issued and outstanding amounts to $8,000,000 divided into shares of $50 each; and that there appears on its books an unfunded debt, exclusive of current liabilities, of $72,980,171.62, and a funded debt of $1,080,000.

2. It admits that since long prior to 1901 it has owned about 83,000 acres, and held by lease about 14,500 acres of coal-bearing lands in the Schuylkill region; and it avers that of the coal lands so owned by it about 76,000 acres were acquired prior to 1872, and all of them prior to 1880, and of the said coal lands leased by it, all said acreage was leased by it prior to 1885.

And it admits that practically continuously during that time it has mined anthracite therefrom and has shipped some of it, together with some purchased by it from other producers, to the principal eastern, southern, and western markets, including amongst the former New York City (Manhattan), Brooklyn, Trenton, Philadelphia, Camden, Wilmington, Chester, Baltimore, Washington, New London, New Haven, Providence, Newport, Fall River, New Bedford, Boston, Portland, and other points in New England and on Long Island Sound. But it avers that the said coal shipped by it to the points above named, except some of that shipped to Boston and to New Bedford, is sold by it in the State of Pennsylvania.

3. It admits that anthracite is a valuable article; that in recent years the average yearly production has been about 65,000,000
141 gross tons; that the value of the output of anthracite ranks high in the scale of values of mineral products in the United States; and that the smaller sizes are extensively used for steam purposes in New York City, Boston, and other large cities of the East.

It admits that, with few exceptions presently unimportant, the only known deposits of anthracite of present economic value underlie an area in neighboring counties of eastern Pennsylvania, and that the deposits thereof extend to and are included within the districts of the said State substantially as described and set forth in the plaintiff's petition; but, if the allegations of said petition in this respect and in respect of comparative areas and distances are pertinent or material, it asks that strict proof thereof be made.

4. It admits that, by September 23d, 1896, and long before that time, it had acquired and then held the major portion of the shares of capital stock of Tremont Coal Company, Fulton Coal Company, Preston Coal and Improvement Company, Delaware Coal Company, Mammoth Vein Coal and Iron Company, and Locust Gap Improvement Company, owning together about 9,000 acres of anthracite coal lands in the Schuylkill region.

It avers that the lands of all these companies, excepting those of the Fulton Coal Company, have been leased to it since prior to 1885.

And it avers that all the shares of stock in said coal companies and all the coal lands purchased or acquired by it as hereinbefore set forth, were purchased and acquired by it in the normal and natural course of the lawful business of this defendant, in the exercise of lawful powers plainly granted by its charter and in pursuance of the plain and lawful purposes of its incorporation, and that said lands were acquired by it with the intention of mining them as it became practicable so to do and to secure to this defendant the means to compete, and to continue to compete, in the markets in the production and sale of a commodity for the mining and sale of which it was organized under the law.

142 5. It admits that, from the lands theretofore purchased or acquired by it and from the lands of the said coal companies, the major portion of whose capital stocks were so as aforesaid acquired by it, there were produced in 1896 about 7,000,000 tons of anthracite and that, in that year, it purchased anthracite produced by others than this defendant to the amount of about 1,000,000 tons—substantially all of which was shipped by it over the lines of the Philadelphia and Reading Railroad Company.

It avers that, from the time it actively entered upon the business for which it was created, shortly after its incorporation in 1871, it began to purchase coal for resale in the market and that, throughout substantially all the time during which it has conducted its own operations, it has continued, in the ordinary and usual course of business, to make contracts for such sale and resale; and, during the several periods in which its properties were in the hands of receiv-

ers appointed by courts of the United States, namely from May 24th, 1880, to May 16th, 1884, from June 2d, 1884, to January 2d, 1888, and from February 20th, 1893, to December 1st, 1896, the receivers continued, in the ordinary and usual course of business, to make such contracts.

6. It admits that the Philadelphia and Reading Railroad Company which, from the time of the incorporation of this defendant up to September 23d, 1896, held and owned—subject to certain pledges thereof—substantially all the capital stock of this defendant, did, in a thoroughly natural and lawful manner, aid this defendant from time to time with money and credit in large amounts to assist it in acquiring the said coal lands and the shares of other coal mining companies and to enable it to develop the same and to acquire shipping and marketing facilities and thereby to increase its production and sales of anthracite.

It admits that, up to September 23d, 1896, for the several objects hereinabove stated, said railroad company had advanced to it upwards of $65,000,000, and had guaranteed, as to principal and interest, about $12,000,000 of the bonds of this defendant which
143 had been issued by it in part payment of the purchase money for certain of its coal lands, and that on said date the claims of said railroad company and of its receivers against this defendant were substantially as follows:

1. A mortgage bond of this defendant, dated July 1st, 1874, for	$30,000,000.00
2. A mortgage bond of this defendant, dated December 28th, 1876, for	10,000,000.00
3. Loan account, representing cash advances	24,879,336.16
4. Current business account approximating	4,300,000.00

But it avers that said guarantee was made, and that by far the largest part of said indebtedness had accrued, long prior to 1890, and most of it prior to 1887, and that said guarantee and said advances were authorized by law and were made in compliance and accord with law.

It admits that no interest was paid by this defendant on these advances and that the interest and sinking fund charges on the said $12,000,000 bonds of this defendant, guaranteed by said railroad company, were at times paid by the latter company.

7. It admits that, in February, 1892, it contracted to purchase at the mines the entire output of anthracite of the Lehigh Valley Coal Company and that of the Lehigh and Wilkes-Barre Coal Company.

And it admits that in August of that year upon a preliminary application heard upon information, answers, affidavits, and limited ex parte proofs in a proceeding in the Court of Chancery of New Jersey in which John P. Stockton, attorney general of New Jersey, was plaintiff, and the Central Railroad Company of New Jersey, the Port Reading Railroad Company, and the Philadelphia and Reading Railroad Company were defendants (50 N. J. Equity, 52), an injunction was issued forbidding all operations under a certain

lease made in February of that year by said the Central Railroad Company of New Jersey to said Port Reading Railroad Company, because the said lease was made without legal sanction and in
144 violation—as it was held—of the prohibitions of the act of the Legislature of New Jersey of May 2d, 1885 (P. L., 324).

And it avers that after that decision said the Central Railroad Company of New Jersey resumed operation of its own road.

But this defendant avers that said contract to purchase at the mines the entire output of anthracite of the Lehigh and Wilkes-Barre Coal Company was not annulled by any decree in those or any other proceedings.

And this defendant avers that in proceedings in equity brought in March, 1892, in the Court of Common Pleas of Lycoming County, Pennsylvania, by a stockholder of both the Philadelphia and Reading Railroad Company and of the Lehigh Valley Railroad Company against these companies, the Central Railroad Company of New Jersey, the said coal companies, and others, in which it was strenuously sought to procure the annulment of said lease, as well as that of the Lehigh Valley Railroad Company to the Philadelphia and Reading Railroad Company, and to have the said agreements for the purchase of anthracite declared invalid and void, and in which proceedings abundant testimony was taken, the said leases were held to be valid and the said coal purchase contracts were held to be legal and valid transactions. (Arnot *vs.* Lehigh Valley Railroad Company et al.)

8. It admits that in 1893 the Philadelphia and Reading Railroad Company having defaulted in the payment of obligations secured by a mortgage covering not only its property, but that of this defendant, the United States Circuit Court for the Eastern District of Pennsylvania put the properties of both these companies in the hands of receivers; and that on September 23d, 1896, in pursuance of a decree of that court, made and entered in a foreclosure suit brought therein (to April sessions, 1895, No. 9, in equity), all of the properties and assets of these two companies were sold at public sale and purchased by Charles H. Coster and Francis Lynde Stetson in accordance with a plan of reorganization of which J. P. Morgan & Co. were the managers.

145 It admits that on November 18th, 1896, in consideration of this defendant agreeing to join, as co-obligor, in the execution of certain bonds for the aggregate sum of $135,000,000 and in the execution of a certain mortgage to secure the same, of its agreement to grant, pledge, and convey thereunder, as additional security for said bonds, all of its property and franchises of every name and nature, and its assumption and agreement to pay a certain loan of the Philadelphia and Reading Railroad Company for the sum of $1,774,000, said purchasers conveyed to it, inter alia, all the coal lands, mines shares of coal companies, and—with certain exceptions—all other property formerly held by this defendant and acquired by said purchasers at the sale thereof above referred to.

It admits that the mortgage executed by it in pursuance of this agreement, called the general mortgage, and dated January 5th, 1897, is the joint obligation of the Reading Company and of this defendant; that it covers substantially all the properties of both companies, except certain stocks and bonds; that, by its terms, of the authorized issue of $135,000,000 bonds secured thereby, bonds to the amount of $64,631,000 were reserved for the purpose of providing for the acquisition by purchase or exchange, or for the redemption, as provided in said mortgage, of (1) outstanding bonds of the Philadelphia and Reading Railroad Company for principal sums amounting to $50,968,277 and (2) of ground rents and bonds of said railroad company secured by mortgage on real estate, $1,612,063, and (3) divisional coal land bonds of this defendant, the principal sums of which outstanding on January 1st, 1897, amounted to $12,050,606; and that the remaining $20,000,000 of said authorized issue were reserved for one or more of the following purposes, viz, (a) the acquisition of additional shares of stock of Philadelphia and Reading Railway Company and of additional bonds of said railway company to be issued under the latter company's mortgage of November 18th, 1896; (b) for the acquisition or betterment of property upon, along, or appurtenant to properties of one or the other of the mortga-
146 gors in said general mortgage, and subject to the lien of said mortgage at the time of the use of the bonds, or upon, along, or appurtenant to lines of railway or terminal properties of some one or more of the other companies mentioned in said general mortgage, and subject to the lien of said mortgage at the time of the use of the bonds, or upon, along, or appurtenant to lines of railway or terminal properties of some one or more of the other companies mentioned in said general mortgage more than one-half of whose capital stock was pledged in said mortgage, or of some other company of whose capital stock more than one-half, at the time of such use of the bonds, should be pledged under said mortgage; and (c) to reimburse the Reading Company for outlays or advances by it made for, or to promote, any construction or acquisition made pursuant to (a) or (b) on or subsequently to January 1st, 1897; that by a provision of said general mortgage this defendant and its co-obligors therein undertake punctually and regularly to pay or cause to be paid the interest on all the therein specified bonds of both this defendant and the Philadelphia and Reading Railroad Company for the purchase, exchange, or redemption of which the said $64,631,000 bonds of said authorized issue of $135,000,000 were reserved by the terms of said general mortgage until such bonds should be paid and discharged or acquired and pledged under said general mortgage.

9. It admits that it has not yet paid a dividend on its capital stock.

10. It admits that, since December, 1896, Reading Company has, from time to time, made to this defendant certain temporary commercial loans, of the character which large business enterprises commonly obtain during months of production prior to sale of product, but it avers that these temporary loans have been, and are, usually

repaid by this defendant, with interest, wit' a few months after their making.

147 It avers that the amount of what is termed in said petition an advance to it by Reading Company of more than $12,000,000, is in fact credited to said Reading Company on the books of this defendant in an open account; that this amount of about $12,000,000 represents the amounts from time to time used in discharging prior liens on the property of this defendant, general known as divisional coal land bonds, and that these amounts were obtained from the sale of part of the $64,631,000 bonds specifically reserved for this and other purposes by section 3 of article 1 of the said general mortgage of January 5th, 1897, of this defendant and said Reading Company.

It admits that there still is carried on the books of this defendant, in an open account with Reading Company, the amount—less certain deductions—of the debt of this defendant to the Philadelphia and Reading Railroad Company and its receivers as it stood on November 18th, 1896, and as hereinbefore specifically set out in paragraph 6 hereof.

It admits and avers that, excepting interest on its commercial loans from Reading Company upon which it regularly pays interest at the rate of four per cent per annum, the only amounts which it has paid the said company on account of interest are as follows:

In 1900	$884,850.18
In 1901	886,504.62
In 1902	888,780.61
In 1903	1,582,334.41
In 1904	1,582,477.77
In 1905	1,582,255.21
In 1906	1,583,304.53
In 1907	1,583,914.05
In 1908	1,584,485.40
In 1909	935,003.19
In 1910	743,957.87
In 1911	320,000.00
In 1912	810,998.97
In 1913	2,269,405.15

148 10. It admits that, in accordance with its practice since the inauguration of its business in the early seventies, and in the exercise of the charter powers with which it was created, it has, since long prior to 1901, in the ordinary and usual course of its business, purchased, and is now purchasing, from other producers, anthracite for resale in the market. It avers that in the fiscal year ended June 30th, 1913, it so purchased about 500,00 tons of anthracite and also purchased about 454,000 tons of bituminous coal.

But it avers that it makes and has made such purchases in violation of no law but in the lawful exercise of lawful and proper powers and in the ordinary and usual course of its business; that it

takes no step or means to influence or constrain any person or party against his own free will and best business judgment to enter into these transactions; and it avers that, if and when made, such purchases and sales are made only because the parties thereto find them mutually advantageous economically and otherwise profitable in the conduct of their respective enterprises.

11. It admits that it is a large owner, producer, and seller of anthracite; but if the allegations of the petition as to the comparative or relative status of this defendant as an owner of unmined deposits of anthracite, as a producer of anthracite, or as a seller thereof, are pertinent or material, it asks that strict proof of these allegations be required.

II.

In respect of the allegations of the petition relating to Reading Company and Philadelphia and Reading Railway Company, it refers to the respective answers of these companies which have been exhibited to it; hereby, on information and belief, admitting all that is there admitted and not herein denied, denying all that
149 is therein denied and not herein admitted, and alleging to be true all that is therein alleged to be true and not herein denied.

III.

In respect of the allegations of the petition relating to the other defendants and others, except as herein or hereby admitted or denied, it has not sufficient knowledge or information to form a belief, and, therefore, asks that full proof thereof be required, if deemed pertinent or material.

IV.

In respect of the allegations of the petition relating to it, other than those herein or hereby admitted or alleged to be true, it denies each and every one of the same, and it specifically denies:

1. That anthracite is an article of prime necessity anywhere. It avers that other fuels, including wood, bituminous coal and coke, are for many purposes equally as good and are used throughout large sections of this country and Canada in place of, and to the exclusion of, anthracite.

2. It denies that New York Harbor is the principal market, or the principal distributing point, for anthracite produced or sold by this defendant, or a distributing point at all for this defendant's anthracite, except in respect of occasional and comparatively insignificant shipments.

3. It denies that the action of the Philadelphia and Reading Railroad Company in aiding with its funds and its credit this defendant, in view of the times when, and the circumstances and conditions under which, such aid was given, gave this defendant, or resulted in this defendant acquiring, any unfair or unlawful advantage
150 over any other producer or shipper of anthracite, or that it

worked to the disadvantage of any such shipper or producer o the public; and it denies that such acts of assistance enabled sai railroad company—unopposed or in any other manner—to move t or toward a monopoly of the ownership or production of anthracit along its lines in the Schuylkill region or of the sale thereof in th various States.

4. It denies that the acquisition and long continued holding by th Philadelphia and Reading Railroad Company of the capital stoc of this defendant constituted a combination in restraint of trad and commerce, or a monopolization of any part thereof, within th meaning of any law.

5. It denies that this defendant, the Reading Company and Phila delphia and Reading Railway Company, are one and the same asso ciation of persons engaged in mining, selling, and transporting coal or in any one of these lines of business or otherwise, either unde the direction of any of the persons mentioned in said petition o otherwise.

6. It denies that the action of Reading Company in refrainin from exacting prompt or present payment of an amount equal t one-half the interest on the from-time-to-time outstanding bond issued under said general mortgage and for which both it and thi defendant are primarily liable to the bondholder; or in refrainin from collecting, year by year, greater amounts on account of inter est than have heretofore been paid by this defendant to said Readin Company; or any of said Reading Company's acts in respect of thi defendant or action toward it or in its behalf, constitutes unlawfu discrimination against any other shipper along the line of Philadel phia and Reading Railway Company, or increases, or tends to in crease, any power of this defendant over any of its competitors, o secures or promotes, or tends to secure or promote, any monopoliza tion of the ownership, production, or sale of anthracite by this de fendant or by said Reading Company, in violation of any law o otherwise.

151 7. It denies that any acquisition of stock or holding thereo in said petition alleged, or any agreement, lease, or contrac therein alleged and not herein denied, or that these all together o any of them combined, limit or restrain, or tend to limit or restrai in violation of law or otherwise, either this defendant or the Lehig and Wilkes-Barre Coal Company or the Lehigh Coal and Navigatio Company in their respective activities in the business of mining, pu chasing, shipping, and selling of anthracite; or that they tend eithe directly or indirectly to restrain trade and commerce among the sev eral States or that they result in giving any person or party, o persons and parties combined, the power to control, restrain, o monopolize either the production of anthracite, or its transportatio from the mines in Pennsylvania to market points in other States, o its price or sale in or throughout other States.

8. It denies that it is a party, directly or indirectly, to any agre ment, contract, combination, or conspiracy, by virtue of which i

either alone or in combination with the other defendants or any of them, or otherwise, has acquired the power now or hereafter to control, regulate, restrain, or monopolize or by virtue of which it, either alone or in such combination, does control, regulate, restrain, or monopolize, either the production of anthracite, or its transportation from the mines in Pennsylvania to market points in other States, or its price or sale in or throughout other States.

V.

For a further and separate answer it alleges:

1. That it appears by the petition that this suit is brought against it and the other corporations and persons named as defendants
152 therein, for distinct matters and causes, in some of which this defendant is not interested or concerned, and that the petition, therefore, is multifarious.

2. That it appears by the petition that this suit is brought, against it and the other corporations and persons named as defendants therein, for distinct matters and causes, in some of which other defendants are not in any manner interested or concerned, and in respect thereof this suit can proceed against it to hearing and decree without the presence of said defendant, wherefore the petition is multifarious.

Wherefore, this defendant prays that the petition be dismissed as against it with costs.

THE PHILADELPHIA AND READING COAL AND IRON COMPANY,
By W. G. BROWN, *Secretary.*

CHARLES HEEBNER, [SEAL.]
Solicitor for Defendant.

153 In the District Court of the United States for the Eastern District of Pennsylvania.

September term, 1913. No. 1095. In Equity.

THE UNITED STATES OF AMERICA, PETITIONER,

vs.

READING COMPANY, PHILADELPHIA AND READING RAILWAY COMPANY et al., defendants.

(Filed October 22, 1913.)

The separate answer of Philadelphia and Reading Railway Company.

This defendant now and at all times hereafter reserving unto itself all and all manner of benefit of exception and otherwise which can or may be had or taken to the manifold errors, uncertainties,

and imperfections in the said petition contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer unto, answering, says:

I.

In respect of the allegations of the petition relating to it, it admits:

154 1. That it is a corporation of Pennsylvania, duly organized on or about November 17th, 1896, under and in pursuance of the laws of that Commonwealth, by the parties who, on or about September 23d, 1896, at public sale duly had by virtue of a decree of the Circuit Court of the United States for the Eastern District of Pennsylvania, purchased the railroad and franchises formerly of the Philadelphia and Reading Railroad Company—created and then existing by virtue of a special act of the General Assembly of Pennsylvania, approved April 4th, 1833, with its powers enlarged by numerous special and general acts of the general assembly of said Commonwealth—and that said railroad and franchises were duly conveyed to it and are still held by it; that its capital stock was originally $20,000,000, divided into shares of $50 each, and that this was increased on or about April 21st, 1911, to $42,481,700; that, upon conveyance to it, by the purchasers at said sale, of said railroad and franchises and upon this company's accepting the deed of conconveyance therefor and undertaking to do and perform all the acts and things therein cited as contemplated to be done and performed by this company, there were delivered by it, to or for the account of said purchasers, certificates for the entire capital stock of the company as it then was determined, excepting seven shares which were retained one each by the directors in accordance with the desire of the purchasers, and a bond of this company for the principal sum of $20,000,000, dated November 18th, 1896, and payable January 1st, 1997, with interest from date at the rate of six per centum per annum, payable semiannually, said bond being secured by a mortgage of all the property and franchises so conveyed.

2. That on or about November 17th, 1896, it filed with the secretary of state of the Commonwealth of Pennsylvania its acceptance of all the provisions of the constitution of said Commonwealth.

3. That since December 1st, 1896, as owner, lessee, or under
155 other arrangement, it has operated a system of railroads from the Schuylkill region of the anthracite fields southeastwardly, through Reading to Philadelphia and Port Richmond, and from Philadelphia to Chester, all on the Delaware River; and from Philadelphia northeastwardly, through Trenton Junction, to Bound Brook, New Jersey; together with various tributary and branch lines; and that it has ample power under its charter to build branches and laterals.

4. That, since the same date, it has operated tugs and coal-carrying barges from its terminus at Port Richmond to the principal ports of New England, including New London, New Haven, Providence, Newport, Fall River, New Bedford, Boston, and Portland.

5. That, at Philadelphia since December 1st, 1896, and at or near Wilmington since 1900, the lines operated by it have been connected with certain lines operated by the Baltimore and Ohio Railroad Company, thus forming a through route from the said Schuylkill region of the anthracite fields to Baltimore and Washington.

6. That, at Newberry Junction, Pennsylvania, since December 1st, 1896, the lines operated by it have been connected with certain lines operated by the New York Central and Hudson River Railroad Company, thus forming a possible through route to points on the New York Central Lines between Lake Erie and Albany and Boston, including Rotterdam Junction, New York, which is the point of connection between the New York Central and Hudson River Railroad and a line operated by the Boston and Maine Railroad Company.

7. That, since long prior to 1901, anthracite has moved over, or partly over, one or the other of these routes, (1) to Philadelphia, Chester, and Trenton; (2) to Wilmington, Newark, Jersey City, New York City (Manhattan), Brooklyn, and the ports of Long Island Sound and New England, including New London, New
156 Haven, Providence, Newport, Fall River, New Bedford, Boston, and Portland; (3) to Baltimore and Washington; (4) to points between Lake Erie and the Hudson River, on the New York Central Lines; and (5) to points in New England on lines now operated by the Boston and Maine Railroad Company; since December 1st, 1896, being transported to the points in group (1), over the route hereinabove specified, by this defendant alone, and to the other points by that company in conjunction with connecting carriers.

But the quantity of anthracite so transported to any one of these points, except Philadelphia, New York City (Manhattan), Brooklyn, and Lake Erie has been and is relatively very small.

8. That substantially all the output of anthracite not consumed in the vicinity of the mines moves to market over about ten railroad systems, of which the system operated by this defendant, described in paragraph 3 hereof, is one.

9. That New York Harbor and Philadelphia are important markets for anthracite, that Philadelphia is reached by the lines of this defendant and by those of the Pennsylvania Railroad Company, and that a substantial tonnage of anthracite is distributed by water from Philadelphia to points in New England.

10. That it has always been a carrier of anthracite. But it is also, and has always been, a carrier of bituminous coal and of general merchandise. While in the fiscal year ending June 30th, 1912, it transported 11,224,945 gross tons of anthracite, in the same year

it transported 14,806,222 gross tons of bituminous coal and 22,711,791 net tons of general merchandise.

11. That, on or about February 1st, 1900, the lines of Wilmington and Northern Railroad Company were leased to this defendant and that, continuously since that time, it has operated these lines.

157 12. That in each of the years 1906, 1907, and 1908, it paid an annual dividend of thirty per cent on its nominal capital of $20,000,000, in each of the years 1909, 1910, and 1911, it paid an annual dividend of twenty-five per cent on said capital, and since that time an annual dividend of fifteen per cent on its capital of $42,481,700.

13. That, by the terms of its mortgage of November 18th, 1896, securing and authorized issue of $30,000,000 bonds, of which $20,000,000, in one bond, were delivered, as set forth in paragraph 1 hereof, in part payment for the railroad and franchises formerly of the Philadelphia and Reading Railroad Company, it is provided that the remaining $10,000,000 bonds of said authorized issue may be issued and used only to reimburse Reading Company for one-half of the amount of such advances as the latter company, at the request, or with the approval, of this defendant, should make, prior to such issue and subsequently to January 1st, 1897, for one or more of several specific purposes set forth in section 3 of article 1 of said mortgage, and only in accordance with the provisions of that article.

II.

In respect of the allegations of the petition relating to Reading Company, the Philadelphia and Reading Coal and Iron Company and Wilmington and Northern Railroad Company, it refers to the respective answers of these companies which have been exhibited to it, hereby, on information and belief, admitting all that is therein admitted and not herein denied, denying all that is there denied and not herein admitted, and alleging to be true all that is therein alleged to be true and not herein denied.

III.

In respect of the allegations of the petition relating to the other defendants, except as herein admitted or denied, it has not sufficient knowledge or information to form a belief, and, therefore, asks that full proof thereof be made, if deemed material.

158 IV.

In respect of the allegations of the petition relating to it, other than those herein admitted or alleged to be true, it denies each and every one of the same, and it specifically denies:

1. That the transportation of anthracite by railroad, at the rates now and for a long time past in force, has been and is enormously profitable.

2. It denies that it was any violation of any State law or of any United States law for the Philadelphia and Reading Railroad Company, in the year 1871, to acquire all the capital stock of the Philadelphia and Reading Coal and Iron Company or to purchase or guarantee the bonds of that company. It avers that the company now bearing that name was incorporated by an act of the General Assembly of Pennsylvania, approved May 18th, 1871, and it is plainly and distinctly provided therein (section 5), that "it shall be lawful * * * for any railroad or mining company existing under the laws of this State to subscribe for or purchase the stock, or to purchase or guarantee the bonds of the company hereby incorporated."

3. It denies that it was the purpose of said railroad company, in acquiring the capital stock of said coal and iron company or in lending its financial assistance to the latter, to control the production of anthracite in the Schuylkill region, or the transportation or sale thereof among the States or to monopolize the ownership or production thereof, or to monopolize the transportation thereof.

It denies that said railroad company did any of the acts or things in said petition charged to have been done by it through said coal and iron company or with the doing of which, if done by the coal and iron company, the railroad company is charged because of its ownership of the stock of said coal and iron company.

And it denies that the control of said coal and iron com-
159 pany by said railroad company by stock ownership constituted a combination in restraint of trade or commerce, or a monopolization of any part thereof, within the meaning of any law.

4. It denies that either the making, on July 12th, 1870, of the lease and contract between said railroad company and the Schuylkill Navigation Company (duly authorized by an act of the General Assembly of Pennsylvania, approved April 14th, 1870, P. L., page 75), and by which the navigation company, which was then heavily indebted to said railroad company, conveyed in fee to the latter company valuable real estate and other property not needed for navigation purposes, or the acquisition by said railroad company of a large part of the outstanding capital stock of said navigation company, was in pursuance of or in furtherance of any plan of said railroad company, or of any other party or parties, to suppress competition by the canal of said navigation company, or to monopolize the transportation of anthracite from the Schuylkill region, or that it tended to any such monopolization.

It denies that after the making of said lease the traffic of said navigation company's canal was diverted to said railroad.

In view of the facts that said canal does not reach any of the points of origin of anthracite, that the deliveries required by the markets for anthracite cannot be effected by said canal, that purchasers of anthracite will not tolerate the slow transportation by canal when rail transportation can be obtained, and that the opera-

tors of said canal cannot economically perform the services required in the transportation or delivery of anthracite, this defendant denies that the operators of said canal are or could be active competitors of the operators of said railroad in the transportation of anthracite from the mines to tidewater at Philadelphia or to any intermediate point; denies that the route via this canal was or is a competitive transportation route with respect to that via said railroad; and denies that the lease and sale to said railroad company by said navigation company was in any sense a combination in
160 restraint of interstate trade or commerce or a monopolization thereof within the meaning of the act of Congress approved July 2d, 1890, or otherwise, or that it effected or tended to effect such a combination, such restraint, or such monopolization.

5. It denies that, prior to 1898, the Wilmington and Northern Railroad Company was transporting in interstate commerce passengers or freight in competition with this defendant.

And it denies that the Wilmington and Northern Railroad Company, since prior to 1901, or at any time, has been a potential competitor of this defendant in the interstate transportation of anthracite or any other freight.

And it further denies that the railroad of the Wilmington and Northern Railroad Company and its connections, and the lines of this defendant, do now constitute, or that they have at any time constituted potentially competitive routes of transportation from the anthracite fields, or any part thereof, to tide water at the head of Delaware Bay.

6. It denies that the railroads and water lines operated since prior to 1901 by this defendant and those operated by the Central Railroad Company of New Jersey, respectively, have at any time constituted, or do now constitute, in any practical sense of the words or in any sense that would make a joint ownership thereof obnoxious to existing law, potentially competitive routes of transportation between the anthracite fields of Pennsylvania and points on the waters of New York Harbor, including either Newark, Jersey City, New York City (Manhattan), or Brooklyn, or the ports of Long Island Sound or New England, including either New London, New Haven, Providence, Newport, Fall River, New Bedford, Boston, or Portland; or that, with their respective connections, they have at any time constituted, or do now constitute, in the sense of words above mentioned, potentially competitive routes of transportation between the anthracite fields and either Trenton, Philadelphia, Camden, Chester, Wilmington, Baltimore, Washington, or
161 points along the Hudson River, or points between Albany and Boston on the New York Central lines or points in central and northern New England on the lines of the Boston and Maine Railroad Company.

7. It denies that either the railroads operated by the Lehigh and Hudson River Railway, with their connections, or those operated

by the Lehigh and New England Railroad Company, with their connections, constitute—in the sense of the words stated in the foregoing paragraph—a route which is potentially competitive with either of the two routes referred to in said preceding paragraph.

8. It denies that it has any interest, direct or otherwise, in the production or sale of anthracite, save as a transporter thereof; that any anthracite is manufactured, mined, or produced by it or under its authority; that it transports, in interstate or foreign commerce, any anthracite in violation of the commodities clause of the act to regulate commerce as amended June 29th, 1906.

9. It denies that this defendant, the Reading Company, and the Philadelphia and Reading Coal and Iron Company are one and the same association of persons, engaged in mining, selling, and transporting anthracite, either under the direction of any of the persons mentioned in said petition or otherwise.

10. It denies that it is a party, directly or indirectly, to any agreement, contract, combination, or conspiracy, by virtue of which it, either alone or in combination with the other defendants, or any of them, or otherwise, has acquired the power now or hereafter to control, regulate, restrain, or monopolize, or by virtue of which it, either alone or in such combination, has controlled, regulated, restrained, or monopolized either the production of anthracite or its transportation from the mines in Pennsylvania to market points in other States, or its price or sale in or throughout other States.

162 V.

For a further and separate answer it alleges:

1. That it appears by the petition that this suit is brought against it and the other corporations and persons named as defendants therein for distinct matters and causes, in some of which this defendant is not interested or concerned, and that the petition is, therefore, multifarious.

2. That it appears by the petition that this suit is brought against it and the other corporations and persons named as defendants therein for distinct matters and causes, in some of which other defendants are not in any manner interested or concerned, and in respect thereof this suit can proceed against it to hearing and decree without the presence of said defendants, wherefore the petition is multifarious.

Wherefore, this defendant prays that the petition be dismissed as against it with costs.

PHILADELPHIA AND READING RAILWAY COMPANY,
By GEO. ZIEGLER, *Secretary.*

CHARLES HEEBNER, [SEAL.]
Solicitor for Defendant.

163 In the District Court of the United States for the Eastern District of Pennsylvania.

September term, 1913. No. 1095. In Equity.

THE UNITED STATES OF AMERICA, PETITIONER,

vs.

READING COMPANY, PHILADELPHIA AND READING RAILWAY COMPANY, ET AL., DEFENDANTS.

(Filed October 29, 1913.)

The joint and separate answer of George F. Baer, George F. Baker, Edward T. Stotesbury, Henry C. Frick, Peter A. B. Widener, Henry A du Pont, Daniel Willard, Henry P. McKean, and Samuel Dickson.

These defendants, now and at all times hereafter, reserving unto themselves and each of them all and all manner of benefit of exception and otherwise which can or may be had or taken to the manifold errors, uncertainties, and imperfections in the said
164 petition contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer unto, answering say:

I.

In respect o fthe allegations of the petition relating to them, they admit as follows:

1. That George F. Baer is president and a director of Reading Company, president of Philadelphia and Reading Railway Company, president of the Philadelphia and Reading Coal and Iron Company, president and a director of the Central Railroad Company of New Jersey, president and a director of the Lehigh and Wilkes-Barre Coal Company, and a director of the Lehigh and Hudson River Railway Company.

That George F. Baker, Edward T. Stotesbury, Henry C. Frick, Peter A. B. Widener, Henry A. du Pont, Daniel Willard, Henry P. McKean, and Samuel Dickson are directors of Reading Company, and all of them, except Henry P. McKean and Samuel Dickson, are members of the board of directors of Philadelphia and Reading Railway Company, and all of them, except Henry A. du Pont and Samuel Dickson, are directors of the Philadelphia and Reading Coal and Iron Company.

That George F. Baker and Edward T. Stotesbury are directors of the Central Railroad Company of New Jersey and the Lehigh and Wilkes-Barre Coal Company, and the latter is also a director of Lehigh and Hudson River Railway Company.

That Samuel Dickson is a director of the Lehigh and Wilkes-Barre Coal Company, of Lehigh and New England Railroad Company, and a member of the board of managers of the Lehigh Coal and Navigation Company.

That Henry P. McKean is a member of the board of managers of the Lehigh Coal and Navigation Company.

That Henry A. du Pont is president of Wilmington and Northern Railroad Company.

165 2. That, in accordance with the provisions of the acts of the General Assembly of Pennsylvania under which Reading Company was created and by which its rights and privileges were given, the directors of said company are authorized and empowered to have and to exercise, in the name and in behalf of said company, all said rights and privileges.

II.

In respect of the allegations of the petition relating to the several and respective defendant companies of which these defendants are respectively officers, directors, or managers, these defendants refer to the respective answers of these companies; hereby, on information and belief, admitting all that is therein admitted and not herein denied, denying all that is therein denied and not herein admitted, and alleging to be true all that is therein alleged to be true and not herein denied.

III.

In respect of the allegations of the petition relating to the other defendants and others, except as herein or hereby admitted or denied, these defendants have not sufficient knowledge or information to form a belief, and, therefore, ask that strict proof thereof be required if deemed pertinent or material.

IV.

In respect of the allegations of the petition relating to these defendants, other than those herein or hereby admitted or alleged to be true, they deny each and every one of them, and they specifically deny:

1. That, in the manner or by the means in said petition described, they, or any of them, have been, or are, engaged in any combination or conspiracy in restraint of interstate or foreign trade and commerce, or that they, or any of them, have attempted to monopo-

166 lize or are monopolizing any part of such trade and commerce, or that they have controlled or directed, or taken part in the control or direction, or are controlling or directing or taking part

in the control or direction of, any such combination, conspiracy, or monopolization, in violation of the act of Congress of July 2d, 1890, or otherwise; and every one of said defendants severally denies that he, or any of the defendant companies of which he is an officer, director, or manager, is a party, directly or indirectly, to any agreement, contract, combination, or conspiracy, by virtue of which he, or any of said defendant companies, either alone or in combination with the other defendants or any of them or otherwise, has acquired the power now or hereafter to control, regulate, restrain, or monopolize, or by virtue of which he or such company, either alone or in combination, does control, regulate, restrain or monopolize, either the production of anthracite, or its transportation from the mines in Pennsylvania to market points in other States, or its price or sale in or throughout other States, in violation of said act of Congress or otherwise.

V.

For a further and separate answer they allege:

1. That it appears by the petition that this suit is brought, against these defendants and certain corporations named as defendants therein, for distinct matters and causes, in some of which these defendants, or some of them, are not interested or concerned, and that the petition, therefore, is multifarious.

2. That it appears by the petition that this suit is brought, against these defendants and certain corporations named as defendants therein, for distinct matters and causes, in some of which defendants, other than these defendants or some of them, are not in any manner interested or concerned, and in respect thereof this suit can
167 proceed against these defendants or some of them to hearing and decree without the presence of said other defendants, wherefore the petition is multifarious.

Wherefore these defendants pray that the petition be dismissed as against them with costs.

GEO. F. BAER.
GEO. F. BAKER.
E. T. STOTESBURY.
HENRY C. FRICK.
P. A. B. WIDENER.
H. A. DU PONT.
DANIEL WILLARD.
HENRY P. MCKEAN.
SAML. DICKSON.

CHARLES HEEBNER,
Solicitor for Defendants.

168 In the District Court of the United States, Eastern District of Pennsylvania.

THE UNITED STATES OF AMERICA, PETITIONER,

vs.

READING COMPANY, PHILADELPHIA & READING RAILWAY COMPANY, the Philadelphia & Reading Coal & Iron Company, the Central Railroad of New Jersey, the Lehigh & Wilkes-Barre Coal Company, the Lehigh Coal & Navigation Company, Wilmington & Northern Railroad Company, Lehigh & Hudson River Railway Company, and others, defendants.

Answer.

(Answer filed November 1, 1913.)

The answer of the Lehigh & Hudson River Railway Company, one of the defendants herein, to the petition of the United States of America, respectfully shows to this court for answer thereto:

1. It does not known and can not set forth as to its belief or otherwise whether or not any or all of the allegations set forth in subdivisions numbered II, III, IV, V, VI, and VII of the petition, respectfully are true, and therefore denies the same.

169 II. It admits allegation in subdivision numbered VIII of said petition that: "In 1885 the defendants, the navigation company, and the Central Railroad Company, jointly purchased a majority of the capital stock of the defendant, the Lehigh & Hudson River Railway Company, and thereafter jointly advanced large sums for its improvement and extension. Of its present outstanding capital stock—$1,340,000—the navigation company owns $507,900 and the Central Railroad Company $163,300—together a majority; and of its funded debt—$3,229,000—they jointly guarantee payment of $1,062,000 and interest. The president, vice president, and a director of the Central Railroad Company and the vice president of the navigation company are directors of the said Lehigh & Hudson River Railway Company, and a director of the navigation company is its president and also one of its directors."

It specifically denies that it has at any time been a party to any unlawful agreement or combination in restraint of interstate trade and commerce or in monopolization of a part thereof, or done any act or thing to prevent or restrain competition by or between

170 any of the corporations or persons, parties to this suit. That, on the contrary, all and every of the acts of this defendant alleged against it in said Subdivision VIII of said petition were done in good faith to increase and expand trade and commerce between the States, in so far as this defendant was concerned therein or could control the same.

It does not know and can not set forth as to its belief or otherwise whether any or all of the other allegations set forth in said subdivisions numbered VIII of said petition are true, and therefor denies the same.

It avers that the moneys advanced by the said navigation company and the Central Railroad Company for the benefit of this defendant, as alleged in said Subdivision VIII, has all been repaid by this defendant to said companies; that it was so advanced to secure the construction and maintenance of railroads which would enable this defendant to operate and control its railroad from its then western connection at Phillipsburg, N. J., and its eastern connection at Maybrook, N. Y., and to create a line of railroad which could and would compete with the then existing railroad com-
171 panies operating between points in New England and west thereof, and to give and furnish greater, more direct, and more convenient facilities for traffic between said points. That from and after the extension of the railroad of this defendant in the year 1889 and thereafter to this time, the traffic over said railroad of this defendant has greatly increased, and the purposes and results sought to be secured by such extensions have been fully justified and secured, to the great benefit and advantage of the public and of other railroad companies not parties to this suit. That the rates and charges for traffic over said railroad have diminished by a large percentage during said period, and such traffic is now carried over the line of this defendant at as low rates as by any other railroad company operating between New England and the West over any route.

III. It does not know and can not set forth as to its belief or otherwise whether or not any or all of the allegations set forth in subdivision numbered IX of this petition are true, and therefore denies the same.

172 IV. It specifically denies each and every allegation contained in subdivision numbered X of said petition, in so far as any or all said allegations refer or relate to this defendant.

V. It avers by consent duly filed by more than two-thirds in interest and ownership of the capital stock of this defendant, including in such consent the navigation company and the Central Railroad Company, the capital stock of this defendant was in the year 1912 duly increased to the sum of $1,720,000 and that the capital stock representing such increase and of the par value of $380,000 is held in the treasury of said defendant, subject to the disposition and control of the board of directors thereof.

VI. (1) That it appears by the said petition that this suit is brought against it and the other corporations and persons named as defendants therein for distinct matters and causes, in several of which this defendant is not interested or concerned, and that the petition is therefore multifarious.

173 (2) That it appears by the said petition that this suit is brought against it and the other corporations and persons

named as defendants therein for distinct matters and causes, in several whereof the other defendants are not in any manner interested or concerned, and in respect thereof this suit can proceed against it to hearing and decree without the presence of any of the other defendants, wherefor the petition is multifarious.

All of which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and prays that the petition herein be dismissed as against it, with costs.

JOHN J. BEATTIE, *Solicitor for the Defendant.*
THE LEHIGH AND HUDSON RIVER RAILWAY CO.,
Office and post office address, Warwick,
Orange County, New York.

174 In the District Court of the United States for the Eastern District of Pennsylvania.

September term, 1913. No. 1095. In Equity.

THE UNITED STATES OF AMERICA, PETITIONER,
vs.
READING COMPANY, PHILADELPHIA AND READING RAILWAY COMPANY, ET AL., DEFENDANTS.

(Filed Nov. 13, 1913.)

The separate answer of the Lehigh and Wilkes-Barre Coal Company.

This defendant, now and at all times hereafter reserving unto itself all and all manner of benefit of exception and otherwise which can or may be had or taken to the manifold errors, uncertainties, and imperfections in the said petition contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer unto, answering says:

I.

In respect of the allegations of the petition relating to it, it admits:

1. Its incorporation in January, 1874, under the general
175 laws of Pennsylvania; the amount of its capital stock and funded debt; its ownership of acreage of coal-bearing lands; and the fact that since its organization it has mined and shipped anthracite from these mines, principally to eastern markets.

2. It admits that its bonded debt, secured by mortgage, is guaranteed by the Central Railroad Company of New Jersey, and that in the remote past the said Central Company advanced to it, for purposes of its business, considerable sums of money. But it denies that said railroad company has in recent years advanced to it any money for purposes of its business, the payment of interest on which, when due, was not exacted.

3. It admits that it is a large owner, producer, and seller of anthracite; that its lands are located principally in the Wyoming region;

and that it produced in 1912, 4,828,070 gross tons, and purchased at the mines for resale about 700,000 tons.

But if the allegations of the petition as to its comparative or relative status as an owner of unmined deposits of anthracite, or as a producer or seller of anthracite, are pertinent or material, it asks that strict proof of these allegations be required.

And it avers, as respects such purchases of coal, that it makes, and has made, such purchases in violation of no law but in the lawful exercise of lawful and proper powers and in the ordinary and usual course of its business; that it takes no step or means to influence or constrain any person or party against his own free will and best business judgment to enter into these transactions; and it avers that, if and when made, such purchases and sales are made only because the parties thereto find them mutually advantageous economically and otherwise profitable in the conduct of their respective enterprises.

It alleges that it has at all times been an active competitor with other coal producing companies in the mining and selling of anthracite.

176 II.

In respect of the allegations of the petition relating to the Central Railroad Company of New Jersey, it refers to the answer of this company which has been exhibited to it; hereby, on information and belief, admitting all that is therein admitted and not herein denied, denying all that is therein denied and not herein admitted, and alleging to be true all that is therein alleged to be true and not herein denied.

III.

In respect of the allegations of the petition relating to the other defendants and others, except as herein or hereby admitted or denied, it has not sufficient knowledge or information to form a belief, and, therefore, denies the same and asks that full proof thereof be required, if deemed pertinent or material.

IV.

In respect of the allegations of the petition relating to it, other than those herein or hereby admitted or alleged to be true, it denies each and every one of the same, and it specifically denies:

1. That anthracite is an article of prime necessity anywhere. It avers that other fuels, including wood, bituminous coal and coke, are for many purposes equally as good and are used throughout large sections of this country and Canada in place of, and to the exclusion of, anthracite.

2. It denies that any guarantee of its bonded debt by the Central Railroad Company of New Jersey, or any advance to it by said railroad company for purposes of its business, increases or tends to increase any power of this defendant over any of its competi-

177 tors, or secures or promotes, or tends to secure or promote, any monopolization of the ownership, production or sale of anthracite, by this defendant, in violation of any law or otherwise.

3. It denies that any acquisition of stock or holding thereof, in said petition alleged, or any agreement, lease or contract therein alleged and not herein denied, or that these all together or any of them combined limit or restrain or tend to limit or restrain, in violation of law or otherwise, this defendant in its respective activities in the business of mining, purchasing, shipping and selling of anthracite; or that they tend either directly or indirectly to restrain trade and commerce among the several States, or that they result in giving any person or party, or persons and parties combined, the power to control, restrain, or monopolize either the production of anthracite or its transportation from the mines in Pennsylvania to market points in other States, or its price or sale in or throughout other States.

4. It denies that it is a party, directly or indirectly, to any agreement, contract, combination, or conspiracy, by virtue of which it, either alone or in combination with the other defendants or any of them, or otherwise, has acquired the power now or hereafter to control, regulate, restrain, or monopolize or by virtue of which it, either alone or in such combination, does control, regulate, restrain, or monopolize either the production of anthracite or its transportation from the mines in Pennsylvania to market points in other States, or its price or sale in or throughout other States.

V.

For a further and separate answer it alleges:

1. That it appears by the petition that this suit is brought
178 against it and the other corporations and persons named as defendants therein, for distinct matters and causes, in some of which this defendant is not interested or concerned, and that the petition, therefore, is multifarious.

2. That it appears by the petition that this suit is brought against it and the other corporations and persons named as defendants therein, for distinct matters and causes, in some of which other defendants are not in any manner interested or concerned, and that in respect thereof this suit can proceed against it to hearing and decree without the presence of said defendant, wherefore the petition is multifarious.

Wherefore this defendant prays that the petition be dismissed as against it, with costs.

THE LEHIGH AND WILKES-BARRE COAL COMPANY,
By G. O. WATERMAN, *Secretary.*

[SEAL]

JACKSON E. REYNOLDS,
ROBERT W. DE FOREST,
Solicitors for Defendant.

179 In the District Court of the United States for the Eastern District of Pennsylvania.

September Term, 1913. No. 1095. In Equity.

THE UNITED STATES OF AMERICA, PETITIONER,

vs.

READING COMPANY, PHILADELPHIA AND READING RAILWAY COMPANY, et al., Defendants.

(Filed November 13, 1913.)

The separate answer of the Central Railroad Company of New Jersey.

This defendant, now and at all times hereafter reserving unto itself all and all manner of benefit of exception and otherwise which can or may be had or taken to the manifold errors, uncertainties, and imperfections in the said petition contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer unto, answering says:

I.

In respect to the allegations of the petition relating to it, it alleges:

That in its inception it was a small local railroad known as
180 the "Somerville and Easton Railroad," incorporated by special act of the Legislature of the State of New Jersey, approved February 26, 1847, and authorized to build a railroad between Somerville and the Delaware River opposite to Easton. That by a supplement to its act of incorporation, approved February 22, 1849, it was authorized to purchase another local railroad extending from Somerville to the Sound at Elizabeth, N. J., which had been constructed under a special act of the Legislature of the State of New Jersey entitled "An act to incorporate the Elizabethtown and Somerville Railroad Company," passed February 9, 1831. By this purchase the Elizabethtown and Somerville Railroad became a part of the railroad authorized to be constructed by the Somerville and Easton Railroad Company. By the same act the name of the company formed by the union of these two local railroads was changed to "The Central Railroad Company of New Jersey," hereinafter called the "Central Company." By a further supplement to the first-named act, approved March 17, 1854, the Central Company was authorized "to erect, build, or extend such wharves, docks, or piers opposite to and adjoining any lands owned by them in the township of Elizabeth, as far in the sound or bay as may be necessary for the purposes of facilitating the transshipment of coal and

their general transporting business; and also to have and hold whatever wharves, piers, lands, or lots, steamboats, sailing vessels, and such other facilities in the city of New York or elsewhere as may be necessary for the management of their business." By the same act the said railroad company was authorized to purchase or lease or operate any railroad which may connect with or intersect their road. All the provisions of this supplement were duly assented to and accepted by the said company.

By a further supplement to such first-named act, approved February 23, 1860, the Central Company was authorized to extend its railroad from Elizabeth to some point or points on New
181 York Bay in the county of Hudson, at or south of Jersey City, and to that end to construct a bridge over Newark Bay.

A further supplement to said first-named act, approved March 21, 1874, enacted after the lease of the Lehigh and Susquehanna Railroad, executed between Lehigh Coal and Navigation Company, hereinafter called the "navigation company," and the Central Company on March 31, 1871, a copy of which is annexed to the petition, contains the following recital:

Whereas "The Central Railroad Company of New Jersey" are the lessees, in perpetuity, of the railroad, branches, and works of the Lehigh Coal and Navigation Company in the State of Pennsylvania, and, in order to secure a paying business for their said railroad and works, it may be advisable and necessary that the said "The Central Railroad Company of New Jersey" should guarantee the payment of such bonds as may be issued, from time to time, by companies owning or working coal land adjacent to any of the said roads or works.

This supplement, therefore, authorizes the Central Company "to guarantee the payment of bonds of any coal company or companies owning or working coal lands along the line of or adjacent to any of the railroads, branches, or works in the State of Pennsylvania so held by lease by the said company, and in which lands the said company may or may have not have an interest."

All of said acts are herein referred to as they are incorporated in the laws of the State of New Jersey for the years named with like effect as if herein set forth at length.

Previous to the year 1871 the railroad, which had begun as a small local road between Somerville and the Delaware River opposite Easton, had been developed under its new title, the Central Railroad Company of New Jersey, into a thorough line extending from the Delaware River to Communipaw, at tide water on New
182 York Bay, opposite the city of New York, and had become one of the chief routes over which anthracite coal, as well as other merchandise, moved from the Delaware River to New York.

The Lehigh Valley Railroad then terminated at Easton. Its president was one of the directors of the Central Company, and anthracite coal from the coal regions served by the Lehigh Valley passed over the Central Railroad of New Jersey from Easton to tidewater in New York harbor as well as the markets in New Jersey.

The Delaware, Lackawanna and Western Railroad at that time connected with the Central Railroad of New Jersey at Hampton, New Jersey, a point a few miles east of the Delaware River, and the anthracite coal from that part of the coal regions served by the said Lackawanna Company was transported over the Central Railroad of New Jersey from Hampton Junction to tidewater at Elizabeth, where the coal docks of the Lackawanna were located.

Until shortly before 1871 the Central Railroad of New Jersey had formed in connection with the Lehigh Valley Railroad, Philadelphia and Reading Railroad, and Pennsylvania Railroad, a very important through route to the west known as the "Allentown Route."

The Central Railroad of New Jersey also connected at Phillipsburg with the Lehigh and Susquehanna Railroad, the railroad of the navigation company, which had been completed in or about the year 1868.

During the period of its development from a small local road, running between Somerville and Easton in 1847, to an important trunk line extending through New Jersey from the Delaware River to New York Harbor, carrying not only its own traffic but the traffic contributed to it from Pennsylvania by its connecting lines, the Lehigh Valley Railroad, the Lehigh and Susquehanna Railroad, the Delaware, Lackawanna and Western Railroad, and the Pennsylvania
189 Railroad, the Central Company had expended large sums in the construction of its railroad, in bridging Newark Bay, in developing terminals at Communipaw and New York City, and in wharves, docks, piers, and other terminal facilities. In order to enable it to do so it increased its stock repeatedly under the authority given to it by the said supplement to the act incorporating the Somerville and Easton Railroad, approved April 5, 1865, and by the supplement to said act approved March 11, 1863, and the supplement approved March 5, 1866. As a result of its having availed of this supplemental authority, the issued capital stock of the said railroad company on January 1, 1871, amounted to $16,182,150.00.

The situation which confronted the stockholders and directors of the Central Company in 1871, at and before the execution of the lease of the Lehigh and Susquehanna Railroad above referred to, was substantially as follows: They had at great expense constructed their railroad as a trunk line to receive at Phillipsburg, opposite Easton, on the Delaware River, and transfer thence chiefly to tidewater at New York, all the traffic brought to that point from Pennsylvania by the Lehigh and Susquehanna Railroad, and by the Lehigh Valley Railroad from the latter's own line and from its connection, the Pennsylvania Railroad. The Central Company had likewise enlarged the facilities of its railroad to handle at Hampton Junction all the traffic so derived from and so destined to the Delaware, Lackawanna and Western Railroad. At large expense it had equipped its railroad with a third rail to accommodate the cars of the Delaware, Lackawanna and Western Railroad, which at that

time were of broad and not of standard gauge. Its railroad and the public served by that railroad were threatened with the loss of the through connections previously existing and the business of these connecting lines, for the accommodation of which the Central Railroad had been in large part constructed, and the loss of which
184 would have again reduced that railroad to the position of a small local road without any remunerative use for the enlarged facilities provided.

For some years prior to 1871 the Lehigh Valley Railroad Company had been contemplating a secession from the through-routing alliance with the Central and had adopted the policy of establishing a route of its own under Lehigh Valley control which should reach from the anthracite mines to tidewater. In consummation of this long contemplated plan the Morris Canal and Banking Company set about securing legislative sanction to lease in perpetuity their property. As a result of that effort, such sanction was accorded by the Legislature of New Jersey, March 14, 1871, by Chapter CLIII of the statutes of that year. Shortly thereafter the Lehigh Valley announced that it had become the lessee of the properties of the Morris Canal and Banking Company and took over their operation. In pursuance of the same policy the Lehigh Valley contemporaneously sought to obtain, and did obtain, an interest in the New Jersey West Line Railroad Company, chartered to build a line of railroad from the Delaware River to Newark, New Jersey, fourteen miles of which was at that time in operation, and thirteen additional miles of which were under construction.

This policy, thus overtly evidenced by these public acts early in 1871, is still further reflected in the later activities of the Lehigh Valley in securing the incorporation of the Eastern and Amboy Railroad Company to build a line from Phillipsburg to Perth Amboy early the following year under Chapters CX and CCCCL of the Laws of New Jersey of that year. Pursuant to the authority of said laws the Lehigh Valley thereafter entered upon the construction and operation of the railroad contemplated under these acts.

By the end of 1870 the previous long-standing relations of the Central with the Delaware, Lackawanna and Western Railroad were likewise in jeopardy. On December 10th, 1868, the last-
185 named company had leased the Morris and Essex Railroad, extending from the Delaware River at Phillipsburg, New Jersey, to tidewater at Hoboken, New Jersey. Although the Central and the Delaware, Lackawanna and Western were parties to a perpetual contract under which the business of the latter was to be delivered to the former at Hampton and transported thence over the Central's lines to tidewater, the Delaware, Lackawanna and Western had broken that contract by diverting all of its passenger traffic and its freight traffic, other than anthracite coal, to its newly acquired leased line, the Morris and Essex Railroad. It was likewise apparent that it was routing its coal traffic by the Central only as a matter of temporary convenience until it could develop its own

facilities to accommodate the coal traffic via its leased line to Hoboken. The Central began a suit to enforce the terms of the existing traffic agreement, but it was apparent to its stockholders and directors early in 1871 that it was inevitable that in the immediate future the business received from the Delaware, Lackawanna and Western Railroad would be lost to the Central.

The physical connection between the Lehigh and Susquehanna Railroad of the Navigation Company, and the Morris and Essex Railroad had been made March 14th, 1868. In September of that year those two companies entered into traffic arrangements for the through movement of the former's coal over the latter's railroad to Hoboken, New Jersey. On December 10, 1868, the Morris and Essex Railroad had, however, fallen into the hands of the navigation company's competitor, the Delaware, Lackawanna and Western Railroad. The navigation company had no arrangements for through routing of freight other than anthracite coal, nor for passengers.

The "Allentown Route" to the West, made up in part by the Pennsylvania Railroad in connection with the Central's line from Elizabethport to Easton, had been disrupted, and all the pre-
186 existing through traffic diverted from it to other channels several years before in consequence of conflicting alliances formed by the Pennsylvania Railroad with lines of railroad in New Jersey competitive with the Central. This had been accomplished by the building of the Connecting Railroad, which was completed by the Pennsylvania Railroad Company in 1867, which thereafter routed its traffic via said Connecting Railroad and the system of the New Jersey lines consolidated by virtue of Chapter LXIX of the Laws of 1867 of that State, approved February 27th, 1867. This arrangement was working toward a more definite basis during the intervening years and was finally crystallized into essentially its present permanent form on October 31, 1871, by a lease to the Pennsylvania Railroad of the New Jersey lines so consolidated by the new proprietary company, the United New Jersey Railroad and Canal Company.

In this posture of affairs the Central, having lost all of the traffic of the Pennsylvania Railroad; having already lost a great part of the traffic of the Lehigh Valley Railroad, with certain assurances of the immediate prospective loss of the remainder; and having lost all of the passenger and general freight traffic of the Delaware, Lackawanna and Western Railroad, with certain assurance of the immediate prospective loss of the remaining anthracite coal traffic of that company, was confronted with the alternative of either abandoning the competition with its rivals and becoming a mere local railroad in the State of New Jersey, or embarking upon an aggressive competition with those rivals. It chose the latter course, and instead of surrendering, carried its competitive measures into the heart of the anthracite coal region by leasing the Lehigh and Susquehanna Railroad of the Navigation Company on March 31,

1871, under an indenture of lease made a part of the petition in this case as Exhibit A.

187 This lease was in the interest of the public as creating and maintaining a through route; it was in the interest of the Central stockholders, because by it they secured for their company a permanent Pennsylvania connection; it was in the interest of the stockholders of the navigation company, because by it they secured an outlet to the great tidewater market for their coal.

This defendant denies that said lease violates the act of Congress of July 21, 1890, or suppresses competition between the navigation company and any coal company in which the Central Company is a stockholder. It denies that such lease, by requiring the navigation company to ship three-fourths of its coal output over the railroad lines owned by it and operated by the Central Company, or by providing that rates between points common to the canal owned and operated by the navigation company, and the railroad owned by the navigation company, but operated by the Central Company, violates the said act of Congress.

II.

Under the circumstances and qualifications set forth in the above allegation, it admits the allegations of that part of the petition numbered II, under the title "4, the Central Railroad Company of New Jersey," except that it alleges that it has other powers than those given by the Pennsylvania act of April 4, 1868, in the petition referred to.

It denies that at the present time, or recently, it has operated barges or other vessels from its termini in New York Harbor to any points on Long Island Sound and in New England, and while it admits that the railroads operated by it connected at the points named with the Pennsylvania Railroad at Pillipsburg, with the Lehigh & Hudson at Easton, with the Lehigh & New England in Pennsylvania, and with the National Docks Railway at Ster-

188 ling Junction, and via car floats with other lines in New York Harbor, it denies that it so connects by any agreements forming any through routes, otherwise than as any connecting railroad joining in through rates may be deemed to so connect.

Under the said circumstances and qualifications, it also admits the allegations contained in that part of the petition numbered VII, entitled "Alliance between the Central Co. and the Navigation Co.," except that, (1) it denies that in December, 1873, it "controlled" the Honeybrook Coal Company in any other sense than in so far as the then ownership of a majority of the stock of the said Coal Company effected such contral; (2) it denies that it is in any sense the "parent" company of the Lehigh & Wilkes-Barre Coal Company, or that it has controlled said coal company, or that it is united in the ownership and management of said coal company, in any other sense

than in so far as the ownership of a majority of the stock of said coal company constitutes the relation of "parent," or effects such control or ownership; (3) it denies that any alliance or community of interest exists between it and the navigation company which suppresses competition between the navigation company and any coal company in the stock of which it, the Central Company, has any interest, or that the agreements between it and the navigation company unreasonably restrict the freedom of the navigation company in selecting markets, or prevents or suppresses competition between it, the Central Company, and other carriers for the transportation of coal; (4) it denies that its transportation of coal mined or owned by the said coal company violates the commodities clause of the act to regulate commerce. It alleges on the contrary that the transportation of such coal has been held by final judgment of the Federal courts not to constitute such a violation.

It admits the allegations of that part of the petition numbered VIII, entitled "Control of the Lehigh and Hudson River
189 Railroad," &c., so far as the same relates to it, but it denies that the railroads of the Lehigh and Hudson River and the Lehigh and New England Companies ever constituted, or now constitute, two competitive and substantially parallel routes between the anthracite coal fields and points in New York and New England, or that the comparatively small stock interest held by the Central in the Lehigh and Hudson Company constitutes any common control or prevents competition between the Lehigh and Hudson and the Lehigh and New England, and constitutes any combination in restraint of interstate trade and commerce or any monopolization of a part thereof.

It admits that since January 20, 1874, it has owned a large majority, and now owns more than nine-tenths, of the capital stock of the Lehigh & Wilkes-Barre Coal Company.

III.

In respect of the allegations of the petition relating to the Lehigh and Wilkes-Barre Coal Company, it refers to the answer of this company which has been exhibited to it, hereby, on information and belief, admitting all that is therein admitted and not herein denied, denying all that is therein denied and not herein admitted, and alleging to be true all that is therein alleged to be true and not herein denied.

IV.

In respect of the allegations of the petition relating to the other defendants, except as herein admitted or denied, it has not sufficient knowledge or information to form a belief, and, therefore, asks that full proof thereof be made, if deemed material.

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V.

In respect of the allegations of the petition relating to it, other than those herein admitted or alleged to be true, it denies each and every one of the same, and it specifically denies:

1. That the transportation of anthracite by railroad at the rates now and for a long time past in force has been and is enormously profitable.

2. That the railroads and water lines operated since prior to 1901 by this defendant, and those operated by the Philadelphia & Reading Railway Company, respectively, have at any time constituted, or do now constitute, in any practical sense of the words, or in any sense that would make a joint ownership thereof obnoxious to existing law, potentially competitive routes of transportation between the anthracite fields of Pennsylvania and points on the waters of New York Harbor, including either Newark, Jersey City, New York City (Manhattan), or Brooklyn, or the ports of Long Island Sound or New England, including either New London, New Haven, Providence, Newport, Fall River, New Bedford, Boston, or Portland; or that with their respective connections they have at any time constituted, or do now constitute, in the sense of words above mentioned, potentially competitive routes of transportation between the anthracite fields and either Trenton, Philadelphia, Camden, Chester, Wilmington, Baltimore, Washington, or points along the Hudson River, or points between Albany and Boston on the New York Central lines, or points in central and northern New England on the lines of the Boston and Maine Railroad Company.

3. That either the railroads operated by the Lehigh and Hudson River Railway, with their connections, or those operated by the Lehigh and New England Railroad Company, with their

191 connections, constitute in the sense of the words stated in the foregoing paragraph, a route which is potentially competitive with either of the two routes referred to in said preceding paragraph.

4. That it has any interest, direct or otherwise, in the production or sale of anthracite, save as a transporter thereof; that any anthracite is manufactured, mined, or produced by it or under its authority; that it transports, in interstate or foreign commerce, any anthracite in violation of the commodities clause of the act to regulate commerce, as amended June 29th, 1906.

5. That it is a party, directly or indirectly, to any agreement, contract, combination, or conspiracy, by virtue of which it, either alone or in combination with the other defendants, or any of them, or otherwise, has acquired the power now or hereafter to control, regulate, restrain, or monopolize, or by virtue of which it, either alone or in such combination, has controlled, regulated, restrained, or monopolized either the production of anthracite or its transportation from the mines in Pennsylvania to market points in other States, or its price or sale in or throughout other States.

VI.

For a further and separate answer it alleges:

1. That it appears by the petition that this suit is brought against it and the other corporations and persons named as defendants therein, for distinct matters and causes in some of which this defendant is not interested or concerned, and that the petition is, therefore, multifarious.

2. That it appears by the petition that this suit is brought against it and the other corporations and persons named as defend-
192 ants therein, for distinct matters and causes in some of which other defendants are not in any manner interested or concerned, and in respect thereof this suit can proceed against it to hearing and decree without the presence of said defendant, wherefore the petition is multifarious.

Wherefore, this defendant prays that the petition be dismissed as against it, with costs.

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY,
[SEAL.] By G. O. WATERMAN, *Secretary.*
JACKSON E. REYNOLDS,
ROBERT W. DE FOREST,
Solicitors for Defendant.

In the United States District Court for the Eastern District of Pennsylvania.

SEPTEMBER SESSIONS, 1913.

No. 1095. IN EQUITY.

UNITED STATES

v.

READING COMPANY, ET AL.

FINAL HEARING.

Before BUFFINGTON, HUNT, and MCPHERSON, Circuit Judges.

MCPHERSON, *J.:*

This action was begun in September, 1913, and is the successor of an earlier action brought in 1907, which was decided by this court in 1910 (183 Fed., 427), and by the Supreme Court in 1912 (226 U. S., 324). The suit of 1907 was brought against six of the railroads that reach the anthracite coal field of Pennsylvania, with certain coal companies and other defendants. It rested entirely on the antitrust act of 1890; the commodities clause of 1906 was not involved. The result of the suit was to declare two transactions unlawful—a combination through the Temple Iron Co. to prevent the construction of a railroad, and a class of contracts known as the "65 per cent contracts"—while the principal complaint of the Government, namely, that the carriers had combined to distribute the coal tonnage among themselves, was not sustained.

But as a part of the general combination charged to exist among the carriers the Government had averred that several minor combinations had been made, and upon the existence and the lawfulness of these the Supreme Court did not pass, declaring that if such combinations had been made they must be separately attacked, and therefore dismissing the bill as to them, but without prejudice to the Government's right to sue them in detail. The action now before us undertakes to prove the existence of one of these combinations, although the charges made in the suit of 1907 has now been expanded so as to embrace other transactions and other defendants than were embraced by that proceeding. The situation is complicated and may be difficult to state with clearness. It may perhaps simplify matters

if we premise some general statements before taking up the Government's case and the various answers thereto.

The present proceeding in equity declares its object to be (1) to prevent the defendants "from further restraining and monopolizing, or attempting to monopolize, interstate and foreign trade and commerce, especially in anthracite coal, in violation" of the antitrust act of 1890, and (2) to prevent some of the defendants "from transporting in interstate or foreign commerce anthracite coal (not intended for their use as common carriers) mined or produced by them, etc., in violation" of the commodities clause of the act of 1906.

Confining ourselves for the present to the alleged violation of the act of 1890, we note that the subject matter of the litigation is the interstate and foreign trade in anthracite coal. The coal in question is produced solely from the Pennsylvania deposit, which in the light of our present knowledge seems to be unique. The United States has never owned or controlled it; the present landowners derive their title either from the Penns, or from their successor, the Commonwealth of Pennsylvania. What kind of regulation the State might have put in force over this mineral asset if its value had been realized a century ago, and if the views now current in many quarters about the conservation of natural resources had then prevailed, is purely a matter of academic speculation. What actually happened was this: By gradual degrees anthracite coal came to be recognized as an excellent fuel, and thereupon the attention of private capital, always in search of profitable undertakings, was attracted thereto. The region was wild and unsettled, and the State desired to see it developed and was willing to offer inducements to that end. As a result, many persons acquired coal lands for small sums under the liberal land laws of Pennsylvania, and various mining and transporting enterprises were promoted, usually under the direct encouragement and authority of State legislation. Obeying an inevitable tendency, the ownership of these lands, in the course of years, passed into the hands of a comparatively small number of individuals and corporations, so that now, although there are still many smaller owners, the great bulk of the deposit belongs to a few large corporate producers. The agencies of production and transportation have been vastly improved and multiplied, and the use of the fuel has become so widespread that many industries and a very large number of homes are now greatly interested in the way the owners deal with their property.

The general situation from the point of view of the large coal-carrying and coal-producing companies was thus summarized by Judge Gray in the first *Reading case* (183 Fed., at p. 437):

"As appears from the undisputed testimony of the defendants, these present holdings of coal lands have resulted from acquisitions made through a long period of years by the companies named, respectively, or their predecessors in title, beginning, in the case of some of the largest holders and in respect to the larger part of the acquisition, long prior to 1874. The gradual growth of these acquisitions and the consequent development of the present situation, it is contended by the defendants, have been induced by natural causes, such as the geographical and topographical features of the anthracite coal region, which have presented serious obstacles to the construction of railroads with which it was sought to penetrate

the different coal fields of the anthracite region, and which have enhanced enormously the cost of their construction; that in the earlier periods of the development of this region, when the mines and the production of coal were more largely in the hands of individuals and small corporations, the business of mining and marketing coal was wasteful and often resulted largely in the failure or bankruptcy of those concerned therein. The individual exploiter skimmed the cream, so to speak, of his coal lands, and, unable to meet the expense of practicing the economies necessary to their full development, the mines were not infrequently abandoned, and of this abandonment deterioration or ruin was the natural result. That, latterly, the recurrence of strikes and labor troubles have contributed to the difficulties of the situation; that these strikes and labor troubles extended to all the coal-mining and coal-shipping operations of the whole region, affecting all producers, great and small alike, and that the solidarity of the labor unions compelled a joint agreement, embracing all engaged in mining operations as to the terms of settlement; that since the last settlement, in 1902–03, there has resulted a condition of comparative industrial peace in the anthracite region; that this condition, together with the increased demand for and the consequent increased price of coal, has regulated, without destroying, the *natural competition of the great carrying* and producing companies; that many economies in the production and sale of coal have been made possible, wasteful production largely done away with, and, more than all, a wise and scientific conservation of the future supply of this necessity of modern life has been brought about, to the infinite advantage of the public and of those connected with the production of coal, whether as capitalists or laborers.

"It is further urged by the defendants that the destruction of present conditions and methods attending the production and sale of coal will produce a deplorable anarchy in the trade, and involve in confusion and financial loss all those engaged therein, a confusion and loss by which the consumer is bound to suffer."

We think the contentions then made fairly state many of the facts, and in the present case we may say of them, as was said by Judge Gray, that while they are not decisive, they are pertinent, because their importance challenges the court's careful consideration of the question at issue. When we consider that some of the defendants ship coal to almost all the States and to three foreign countries, we obtain some conception of the magnitude of the trade and the need of caution in dealing with so vast a subject.

The Government is not making any attack on the title by which the defendants hold the lands they own in the Pennsylvania region, nor does it seek directly to divest or disturb their enjoyment thereof. The bill does not complain of the method (in and of itself) by which the title is held, and it does not complain of the methods of producing and distributing the coal, so far as these methods are confined to transportation and sale within the State. Neither is the Government complaining of the mere amount of the defendants' holdings, or of the mere extent of their business; the act of 1890 has not declared either such amount or such extent to be unlawful, in and of itself; the act is directed simply against unreasonable restraint of interstate and foreign trade, and neither the amount of the defendants' hold-

ings nor the extent of their business is relevant to the present inquiry except for the light that may be thrown thereby upon the effect of the defendants' conduct on interstate and foreign trade. In a word, we must keep steadily in view the only legitimate object of the proceeding, namely, to show by evidence that the trade referred to has been unreasonably restrained; and we think the investigation falls naturally into two principal divisions: (1) Whether production has been unreasonably restrained, and (2) whether a similar restraint appears in respect to the sale of the product.

With these preliminary remarks, let us turn to the bill and answers, summarizing them as much as possible, in order to see what questions are presented, and to obtain some idea of their relative importance. Approximations are used throughout and in the first instance we shall state the facts with special reference to the alleged violations of the act of 1890. There is little dispute over the facts; the controversy is over the proper inferences to be drawn therefrom.

The bill, or petition, charges as follows:

Subject of the Litigation.

As already stated, the subject is the interstate and foreign trade in anthracite coal from the Pennsylvania field. The larger sizes are extensively used for domestic purposes throughout the New England and Middle Atlantic States, and to a less extent in other sections of the country and in Canada. Small sizes are much used for steam purposes, mainly in the larger cities of the East. In recent years the average annual production has been 75,000,000 tons; in value it is third among the mineral products of the United States. Little anthracite is known to exist except in northeastern Pennsylvania, where the deposit is by far the largest and most valuable. It is found in several adjoining counties, and underlies an area (not always contiguous) of about 310,000 acres, or 484 square miles. At its nearest points, the field is 90 miles from Philadelphia, 140 miles from New York, 250 miles from Pittsburgh, and 265 miles from Lake Erie at the port of Buffalo. In some aspects there are four divisions of the field, but for trade purposes there are only three. From north to south, they are known as the Wyoming region, 176 square miles in area, the Lehigh region, 45 square miles, and the Schuylkill region, 263 square miles. Scranton and Wilkes-Barre are the principal cities in the first; Hazleton, in the second; Pottsville, in the third. Two varieties of anthracite are produced, white ash and red ash, these being further subdivided; the Wyoming and the Lehigh regions produce the white ash almost wholly, while the Schuylkill region produces both varieties.

In the earliest years of the industry the only transportation was by river or canal. But the railroad soon supplanted these agencies, and now carries nearly all the output of the mines to market. Ten railroads enter the field, namely:

(1) The Reading Railroad, which runs from the Schuylkill and the Lehigh regions to Philadelphia, and thence through New Jersey to Port Reading on New York Harbor.

(2) The Central Railroad, which runs from the Wyoming and the Lehigh regions through Pennsylvania and New Jersey to Port Johnston, Elizabethport, and Jersey City, all on New York Harbor.

(3) The New England Railroad, which runs from the Lehigh region to Campbell Hall, N. Y., connecting there with the systems of the New York Central, and of the New York, New Haven & Hartford.

(These three railroads are parties defendant; the remaining seven are not.)

(4) The Lehigh Valley Railroad which runs from all the regions to Perth Amboy and Jersey City, both on New York Harbor, and also to Lake Erie.

(5) The Pennsylvania Railroad, which also reaches all the regions.

(6) The Delaware, Lackawanna & Western Railroad, which runs from the Wyoming region to Hoboken on New York Harbor, and also to Buffalo.

(7) The Erie Railroad, which runs from the Wyoming region to Weehawken on New York Harbor, and also to Buffalo.

(8) The New York, Susquehanna & Western Railroad, which runs from the Wyoming region to Edgewater on New York Harbor.

(9) The New York, Ontario & Western Railroad, which runs from the Wyoming region to tidewater at Cornwall on the Hudson River and at Weehawken on New York Harbor, and also to Oswego on Lake Ontario.

(10) The Delaware & Hudson Railroad, which runs from the Wyoming region in a northerly direction.

It will thus be seen that 8 railroads reach the Wyoming region, 5 reach the Lehigh region, and 3 reach the Schuylkill. All of these 8 railroads have been operating in the field since 1870 at least; of the other two, one entered it directly in 1882 and directly in 1894, and the other entered in 1890.

Two lines of canals also are still in existence and do some business:

(1) The Schuylkill Canal, which follows the Schuylkill River from Port Clinton to Philadelphia, and is owned and operated by the Schuylkill Navigation Co.

(2) The Lehigh Canal and its continuations, the Delaware Division Canal, which follow the Lehigh and the Delaware Rivers from Coalport (or Mauch Chunk) to Easton and thence to Bristol. These canals are operated by one of the defendants, the Lehigh Navigation Co.

All the railroads mentioned except the New England and the Delaware & Hudson, reach New York Harbor, and that point receives about 25 per cent of the total tonnage shipped from the mines. The freight rate is substantially the same over each road. New York harbor is the largest market and point of distribution, all the coal terminals being on its western shore in New Jersey. Running from north to south, they are as follows;

At Edgewater, the terminal of the New York, Susquehanna & Western.

At Hoboken, of the Delaware, Lackawanna & Western.

At Weehawken, of the Erie, and also of the New York, Ontario & Western.

At Elizabethport and at Port Johnston, of the Central Railroad.

At Port Reading, of the Reading Railway.

At Perth Amboy, of the Lehigh Valley.

At South Amboy, of the Pennsylvania.

At these terminals the coal is screened, weighed, dumped into barges, and sold free on board. From the three upper terminals the

freight charge to a dock in New York is about 15 cents a ton. From the remaining and more distant terminals it is 5 cents more, but the selling price at the terminals is 5 cents a ton less, so that the price in New York City is the same whether the coal comes from one terminal or another. Some of the coal shipped to New York Harbor is not transferred to barges, but remains in the cars, these being towed on car floats to or toward points of destination.

After New York Harbor, Philadelphia is the most important market. It is served by the Reading Railway and by the Pennsylvania Railroad, and is a point from which a large quantity of coal is distributed by water, most of it going to New England.

Of the total production of anthracite about 12 per cent is consumed locally; of the remaining 88 per cent about one-fifth finds a market in Pennsylvania and four-fifths elsewhere.

Taking the latest figures that are available—for 1905—the shipments from the mines were distributed to the following points:

	Tons.	Per cent.
Pennsylvania	11,520,383	18.76
New York	18,125,419	29.52
New Jersey	7,212,341	11.74
New England States	8,692,504	14.15
Southern States	2,080,088	3.39
Western States	6,904,314	11.24
Pacific coast	1,743	.003
Canada	2,187,450	3.56
Other foreign countries	42,533	.07
Supply coal to railroads	4,643,426	7.56
Total	61,410,201	100.00

These proportions are probably still maintained, although the nanual production has been increased by 10,000,000 tons or more.

General Description of Defendants.

The Reading Co.—called herein the Holding Co.—is a Pennsylvania corporation created in 1871 with extensive powers that need not be enumerated. Its general office is in Philadelphia, and its present name was adopted in 1896. In November and December of that year its capital stock of $100,000 was increased to $140,000,000, divided into three classes, and all the stock has been issued. Its funded debt is $130,000,000.

The Philadelphia & Reading *Railway* Co.—called the Reading Railway—is the successor of the Philadelphia & Reading *Railroad* Co. It is a Pennsylvania corporation created in November 1896 with a capital stock of $20,000,000, afterwards increased to $42,500,000, and a funded debt that is now $50,000,000. Since December 1, 1896, it has been operating a system of railroads that extend southeasterly from the Schuylkill region of the coal field through Reading to Philadelphia, Port Richmond, and Wilmington, all on the Delaware River. From Philadelphia its line runs northeasterly through Boundbrook to Port Reading on New York Harbor. It is also operating barges and other vessels from Port Richmond to the principal ports of New England from Long Island Sound to Maine; and it operates similar vessels from Port Richmond to the general

neighborhood of New York. Since 1896 and 1900 it has connected at Philadelphia and at Wilmington with the Baltimore & Ohio Railroad, thus forming a through route from the anthracite field to Baltimore and Washington. Since 1896 it has connected at Newberry Junction, Pa., with the New York Central Railroad, thus forming a through route to points on the latter road between Lake Erie and the Hudson River, and between Albany and Boston. At Rotterdam Junction, N. Y., it connects with the Boston & Maine Railroad, which reaches points in central and northern New England. To the points thus reached by its own lines or by these connections it carries large quantities of general merchandise and of coal both bituminous and anthracite.

The Philadelphia & Reading Coal & Iron Co.—called the Coal & Iron Co.—is a Pennsylvania corporation created in 1871. Its present capital stock is $8,000,000 and its debt is more than $74,500,000. Both before and since 1901 it has owned or leased about 98,500 acres of coal-bearing lands in the Schuylkill region, containing many million tons of coal, and has shipped the coal taken from these lands and the coal bought from other producers to many eastern, southern, and western markets.

The Central Railroad Co. of New Jersey—called the Central Railroad—is a New Jersey corporation created in 1847. Its present capital stock is $27,500,000 and its funded debt $48,000,000. Since before 1901 it has operated as owner or lessee a railroad system that extends from the Wyoming and the Lehigh regions easterly across Pennsylvania and New Jersey (via Phillipsburg opposite Easton on the Delaware River) to Port Johnston, Elizabethport, and Jersey City—three points on New York Harbor—and extends also from Newark, N. J., southerly to Delaware Bay. It has extensive power to build and operate branches. Since before 1901 it has also been operating barges and other vessels from Port Johnston and Elizabethport to New York City and to ports on Long Island Sound and in New England; and it also operates car floats from Jersey City to New York City and to other points not far away. Before and since the same year its system has had the following connections:

(1) At Phillipsburg it connects with the Pennsylvania Railroad system, thus forming a through route from the anthracite field to Philadelphia, Wilmington, Baltimore, and Washington.

(2) At Easton it connects with the Lehigh & Hudson River Railway, this road in turn connecting at Maybrook, N. Y., with the system of the New York, New Haven & Hartford Railroad, thus forming a through route from the anthracite field to points in central and southern New England.

(3) Near Slatington, on the Lehigh River, and at Northampton and at Bethlehem Junction, it connects with the Lehigh & New England Railroad, this road in turn connecting at Campbell Hall, N. Y., with the system of the New York, New Haven & Hartford Railroad, thus forming another through route from the anthracite field to points in central and southern New England.

(4) At Sterling Junction and at Weehawken it connects with the West Shore division of the New York Central Railroad—the West Shore in turn connecting at West Albany with the Boston & Albany division of the New York Central, and connecting also at Rotterdam Junction with the Boston & Maine Railroad—thus forming through

routes from the anthracite field to points along the Hudson River and between Albany and Boston, and to Boston and Portland and other points in central and northern New England.

(5) At Sixtieth Street, New York City, via car floats from Jersey City, it connects with the main division of the New York Central, forming a through route from the anthracite field to points on that system along the Hudson and elsewhere.

Over these routes it has carried much traffic of all kinds, including anthracite in large quantities, to New York Harbor, Long Island Sound, and New England from Long Island Sound to Maine; and also to many other points reached either by its own lines or by the lines of the connecting carriers already named.

The Lehigh & Wilkes-Barre Coal Co.—called the Wilkes-Barre Coal Co.—is a Pennsylvania corporation created in 1874 by the merger of two other companies. Its present capital stock is more than $9,000,000, and its funded debt is nearly $17,000,000. Since prior to 1901 it has owned or leased nearly 16,000 acres of coal-bearing lands—13,500 acres being in the Wyoming region, and the rest in the Schuylkill region. These lands contain many million tons of anthracite. It has mined for many years, buying also from other producers, and has shipped and sold the coal chiefly but not wholly in the eastern markets from New York to Maine, reaching Philadelphia also and some points farther south.

The Lehigh Coal & Navigation Co.—called the Lehigh Navigation Co.—is a Pennsylvania corporation created in 1822, originally to hold lands and to build a canal and slack-water navigation along the Lehigh River. Afterwards it was authorized to build certain lines of railroad. Its capital stock is more than $26,000,000, and its funded debt is more than $21,000,000. It built and still owns and operates the Lehigh Canal, which runs for 46 miles along the Lehigh River from Coalport (or Mauch Chunk) to Easton; and it leases the Delaware Division Canal, which connects with the Lehigh Canal and runs for 60 miles along the Delaware River from Easton to tidewater at Bristol, 18 miles above Philadelphia. These two canals thus form a continuous line from the anthracite field to tidewater, and the Lehigh Navigation Co. has operated them for many years as a common carrier, anthracite being the principal freight. Its railroad is the Lehigh & Susquehanna Railroad, about 180 miles long with tributaries and branches, which runs from Phillipsburg northwesterly through Pennsylvania, touching the Schuylkill and the Lehigh regions and penetrating the Wyoming region as far as Wilkes-Barre and Scranton. It has long controlled, by ownership or otherwise, more than 13,000 acres of coal-bearing lands in the Lehigh region, containing many million tons, the annual production being nearly 4,000,000 tons. Its coal is shipped mainly to eastern markets, including New York City and its neighborhood, points in New England from Long Island Sound to Maine, and points from Philadelphia to Washington. It formerly owned also more than 5,000 acres of coal-bearing lands in the Wyoming region, these being acquired after the construction of the Lehigh & Susquehanna Railroad. It owns and operates (until recently) a gathering line, the Panther Creek Railroad, which collects the product of its mines and connects at Hauto with the lines of the Central Railroad, and connects also at Tamaqua

with the lines of the Reading Railway and of the Lehigh & New England Railroad. Almost all the Navigation Co.'s coal reaches market by these two connections at Hauto and at Tamaqua.

The Wilmington & Northern Railroad Co. is a Pennsylvania-Delaware corporation, created in 1877. Its present capital stock is $1,500,000, and its funded debt is $894,000. Its railroad, 72 miles long, runs from Wilmington through Coatesville to a point near Reading, reaching that city over the rails of the Reading Railway. At Reading it connects with the Pennsylvania Railroad and the Reading Railway, thus forming two through routes from the anthracite field to tidewater at Wilmington. Until February 1, 1900, it operated the line from Reading to Wilmington, carrying anthracite as its principal freight.

The Lehigh & Hudson River Railway Co.—called the Hudson River Railway—is a New York-New Jersey corporation, created in 1882. Its present capital stock is $1,340,000, and its funded debt is $3,230,000. Since before 1901 it has operated a railroad from Easton to Maybrook, N. Y. At Easton it connects with the Central Railroad, the Lehigh Valley Railroad, and the Delaware, Lackawanna & Western Railroad (the last two companies not being parties to this action). From Easton it runs through Belvidere (where it makes another connection with the Lackawanna road) to Maybrook, where it connects with the system of the New York, New Haven & Hartford, thus forming a through route from the anthracite field to points in central and southern New England. It also reaches Campbell Hall, N. Y., where it connects with the New York Central system, thus forming a through route from the coal field to points on that system. About 20 per cent of its tonnage is anthracite.

The Lehigh & New England Railroad Co., called the New England Railroad, is a Pennsylvania-New Jersey corporation. Its present capital stock is $1,000,000, and its funded debt is $8,000,000. Its road runs from several points in Pennsylvania to Campbell Hall. In Pennsylvania it connects at Tamaqua, in the Schuylkill region, with the Reading Railway and with the Panther Creek Railroad of the Lehigh Navigation Co.; at Slatington, with the Lehigh Valley Railroad; and at a point opposite Slatington, and also at Northampton and at Bethlehem Junction, with the Central Railroad. At Campbell Hall it connects with the systems of the New York Central and of the New York, New Haven & Hartford, thus forming a through route to points in New York and in central and southern New England. About 16 per cent of its tonnage is anthracite.

The individual defendants have been made parties to the bill in their character as officers or directors of some of the corporations defendant.

Charges Against Defendants.

The charges against the defendants must be much condensed. The transactions attacked are divided into three classes, the first comprising acts and agreements before 1896, the second those from 1896 to 1901, and the third those from 1901 onward. This is the general division, although occasional overlapping may take place.

BEFORE 1896.

1. TRANSACTIONS OF THE READING *RAILROAD* WITH THE COAL & IRON CO.

The Reading *Railway* was not chartered until the latter part of 1896. Before that time its main line and branches (with some exceptions) were operated by the old Reading *Railroad*, a Pennsylvania corporation created in 1833. About 1871 the Railroad Co. undertook to control in some measure the production of anthracite along its lines. It announced the policy in that year, stating its reasons to be the serious interruption of its business by strikes and the alternate periods of expansion and depression in the trade; and stating also that the policy could probably be best carried out without injuring individual interests if the Railroad became the owner of coal lands along its branches. Accordingly it had already bought 70,000 acres, and had borrowed and spent for this purpose $12,000,000.

But the Railroad's character restricted it to the business of a common carrier, and therefore the Coal & Iron Co., incorporated in the same year, took over the lands already purchased. The whole capital stock of the Coal & Iron Co. was owned by the Railroad. Within a short time the Coal & Iron Co. began to mine and sell coal, shipping to market over the Railroad. Assuming the original motive to be as stated, the Government contends that the Railroad soon expanded its policy, intending to control not merely enough lands to secure a fair share of tonnage, but enough to control production in the Schuylkill region and to monopolize transportation therefrom. In support of this contention, the bill cites the report of an investigating committee appointed in 1885 by the Railroad's stockholders, in which the original policy is declared to have grown into a policy to prevent competition and to secure control; in evidence whereof the committee refers to the acquisition of 20,000 additional acres in 1874. Citation is also made from the Railroad's report for 1881, which states the object of the policy to be the control of the entire production in that region, as well as the control of iron production in the Schuylkill Valley.

Pursuing this policy (the bill goes on), the railroad furnished money and credit in large amounts to the Coal & Iron Co., wherewith the latter acquired shipping and marketing facilities, additional coal lands, and the shares of other coal-owning and coal-mining companies. But this policy of buying a large acreage was costly and injudicious; much of the land remained undeveloped and unproductive, and serious loss often resulted, the aggregate thereof being several million dollars, which was paid by the Railroad directly or indirectly. By September, 1896, the Railroad had advanced more than $65,000,000, none of which had been repaid. Moreover, the Railroad had guaranteed $12,000,000 of the Coal & Iron Co.'s bonds, on which it often paid $1,000,000 a year for interest and sinking-fund charges. The Railroad received no interest on any of its advances. Further, the Railroad remitted several million dollars of freight charges against the Coal & Iron Co.

By these financial favors, namely, the advance of money and credit without interest, the payment of losses and of interest on the Coal & Iron Co.'s bonds, and the remission of freight charges, the Railroad unlawfully discriminated against other producers and shippers, and thus was able to advance toward complete control.

The extent of its progress in that direction is indicated by the following facts: By September, 1896, the Coal & Iron Co. had acquired about 169,000 acres of land in the Schuylkill region, more than 98,000 containing coal, and also controlled the capital stock of six other corporations that owned more than 11,000 acres in the same region, 9,000 containing coal. These lands, it is said, contain more than half the coal in the Schuylkill region, and nearly half the whole deposit. On these lands there were 65 collieries, most of which were operated by the Coal & Iron Co., the production in 1896 being more than 7,000,000 tons. As the Coal & Iron Co. also bought coal at the mines from other producers, its total shipments in 1896 over the Railroad were more than 8,000,000 tons. This was about 80 per cent of all the anthracite carried by the Railroad.

These transactions by the two companies are attacked as outside the normal course of business development, and as having both the object and the effect of giving the Railroad control of production in the Schuylkill region and control of carriage and of sale to and in markets beyond the State. Therefore the Railroad's control of the Coal & Iron Co. by stock ownership is charged to have been an unlawful combination and monopoly.

But the Government expressly declares that it does not attack the Coal & Iron Co., in and of itself, as an unlawful combination or monopoly.

2. LEASING OF THE SCHUYLKILL AND THE SUSQUEHANNA CANALS BY THE READING RAILROAD.

The Schuylkill Navigation Co. (not a defendant) owns a canal and slack-water navigation along the Schuylkill River from Port Carbon to Philadelphia, and since before 1870 this canal has been a water route from the coal field to tidewater. In 1869 it carried more than 1,000,000 tons of freight, most of it anthracite; and it was then, and for many years had been, competing actively with the old Reading Railroad in the carriage of coal from the mines to Philadelphia and to intermediate points. In July, 1870, in order to suppress such competition and to monopolize the carriage of anthracite from the Schuylkill region, the railroad leased the canal for 999 years at an annual rental of $655,000. Afterwards, it acquired nearly all the Navigation Co.'s capital stock and debt, $4,000,000, and $8,500,000, respectively. Being thus in control, it diverted traffic from the canal to its own road, so that in 1880 the canal's tonnage was less than 700,000 tons; in 1890 it was less than 150,000 tons; and since that year it has diminished still further. In 1888, the rental was reduced to a nominal sum; before that time the Railroad's loss in operating the canal had been $150,000 a year, this being the price of suppressing competition. The Railroad's lease and other interest continued until September, 1896, when all its property was sold at receivers' sale. The Railroad's control of the Schuylkill Canal is charged to have restrained and monopolized trade unlawfully because the canal's competition was thus suppressed.

We need not refer to the Susquehanna Canal, which runs from Columbia, Pa., to Chesapeake Bay, because the Government seems to lay no weight on the subject.

3. TEMPORARY LEASING OF THE LEHIGH VALLEY AND THE CENTRAL RAILROADS BY THE READING RAILROAD.

The bill goes on to charge that the old Reading Railroad, being thus dominant in producing and transporting coal from the Schuylkill region, undertook to enter the Lehigh and Wyoming regions also. Accordingly, in 1892 it leased for 999 years the lines of the Lehigh Valley Railroad Co., which entered all the regions and extended to New York Harbor and westwardly to Buffalo. It did not act directly in leasing the Central Railroad, but used the agency of the Port Reading Railroad Co., whose entire capital stock it owned. Accordingly, the Port Reading Co. leased for 999 years the lines of the Central Railroad, which entered the Wyoming region and touched the Lehigh and the Schuylkill regions, and had three New York terminals. At the same time the Coal & Iron Co.—whose stock also was owned entirely by the Reading Railroad—contracted to purchase at the mines the whole output of the Lehigh Valley Coal Co., a large owner and producer in all three regions, whose capital stock was owned by the Lehigh Valley Railroad Co. And the Coal & Iron Co. made a similar contract with the Wilkes-Barre Coal Co., a large owner and producer in the Wyoming region, whose capital stock was nearly all owned by the Central Railroad. By these arrangements it is charged that the Reading Railroad would have controlled about 75 per cent of the total deposit of anthracite and the transportation of about 50 per cent of the annual output.

Except in their bearing upon the question of the old Reading Railroad's purpose and object, these leases and contracts are no longer important; the agreements with the Central Railroad and with the Wilkes-Barre Coal Co. were set aside by the New Jersey Court of Chancery, and the Lehigh Valley contracts were thereupon rescinded.

CHARGES IN 1896.

In 1893 the old Reading Railroad and the Coal & Iron Co. went for the third time into the hands of receivers, and on September 23, 1896, all the properties of both companies were sold at judicial sale in accordance with a plan of reorganization of which J. P. Morgan & Co. were the managers. In November, the Reading *Railway* was organized and took title to the railroad properties (except the equipment) formerly belonging to the old Reading *Railroad*, paying for the same by delivering certificates of stock representing its whole capital of $20,000,000, and by executing a purchase money bond and mortgage, also for $20,000,000. The Railway took possession on December 1, and since then has continuously operated these roads.

In November, the purchasers at the sale reconveyed to the Coal & Iron Co. its former property, including lands, mines, and shares of other companies. In consideration whereof it joined the Holding Co. as coobligor in a general mortgage for $135,000,000. On December 1 it took possession of the reconveyed property and has since been engaged in mining, selling, and shipping coal.

Among the securities acquired from the old Reading *Railroad* at the receivers' sale was the whole capital stock of the Reading Co., a Pennsylvania corporation that had been created under another name in 1871, with power *inter alia* to buy and sell the shares and bonds of

other corporations. This company had maintained its corporate existence, but had done little active business. But, as it antedated the Pennsylvania Constitution of 1874—which forbade a common carrier to mine coal for transportation over its line—it was believed to be a suitable agency to effect the practical and substantial combination of the Coal & Iron Co. and the Reading Railway in spite of the constitutional provision. Accordingly its capital stock was increased to $140,000,000 and its name was changed to the Reading Co.—called the Holding Co. in this opinion.

On December 23, the Holding Co. took title to the whole capital stock of the Railway Co. and of the Coal & Iron Co.—$20,000,000 and $8,000,000, respectively—to the purchase money mortgage debt of the Railway Co., $20,000,000 in a single bond; and to all other property sold at the judicial sale that had not already been conveyed to the Reading Railway, or to the Coal & Iron Co. The Holding Co. thus acquired the equipment (railroad and marine) of the old Reading Railroad; the claim of that railroad against the Coal & Iron Co. for advances and freight, amounting to more than $68,000,000; and the capital stock and debt of the Schuylkill Navigation Co. In consideration of this transfer, the Holding Co. delivered certificates for its $140,000,000 of capital stock (except $50,000 thereof), and on January 5, 1897, gave a general mortgage, with the Coal & Iron Co. as joint obligor, which covered substantially all the property of both companies, to secure $135,000,000 of bonds. Of these about $50,000,000 were presently delivered, and the remainder was reserved. The stock and bonds thus delivered by the Holding Co. were thereupon distributed among the persons entitled thereto under the plan of reorganization. Thus the Holding Co. became the owner of all the equipment formerly owned and used by the old Reading Railroad.

The same person became president of the Holding Co. of the Reading Railway and of the Coal & Iron Co., and the same person became treasurer of each. The directors of the Holding Co. furnished a majority in the boards of the Reading Railway and of the Coal & Iron Co., and as a rule the majority in each of these two boards was composed of the same individuals.

Of the bonds secured by the general mortgage of $135,000,000—which binds both the Holding Co. and the Coal & Iron Co.—nearly $51,000,000 were reserved (and are being used) to take care of bonds of the old *railroad* that are secured by mortgage on property now owned by the Reading *Railway;* $14,000,000 were reserved to take care of bonds of the Coal & Iron Co.; and $20,000,000 were reserved and have been used for the benefit of the Reading Railway's roads.

The general mortgage referred to makes both obligors liable for the interest on the outstanding bonds of the old railroad and on the similar bonds of the Coal & Iron Co. The Reading Railway can not raise capital for new construction or improvements by a public sale of the bonds that were reserved for that purpose by a certain prior mortgage dated November 18, 1896, but is obliged to deliver such bonds to the Holding Co. with an equal amount of its capital stock. Thereupon the Holding Co. is to deposit the securities under the general mortgage of January 5, 1897, and issue an equal amount of its own bonds, paying over the proceeds of these to the Railway.

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on the broad question of policy as affecting all cases might be very disastrous.

You had better have a talk with Mr. Heilner, and see whether the opening up of this territory to Schuylkill coal will be limited to the smaller sizes which we can not supply. Of course, you understand that we can not simply put in a rate on the smaller sizes. If we put in a rate at all we must cover all sizes of coal, and Heilner will be able
346 to judge how this condition will affect the restricted markets of the L. & W. B.

Yours, truly,

GEO. F. BAER, *President.*

From Heilner to T. B. Koons, dated December 7, 1908, marked **"Exhibit 42,"** as follows:

Under date of Dec. 7, 1908, Heilner, of the L. & W. B. Coal Co., wrote to Koons, as follows:

"Returning herewith President Baer's letter of the 2d inst., addressed to you, we can only say that we endorse most emphatically the objections which he raised to the proposed tariff in connection with the Reading. It would be most disastrous to all the shippers on the Central Railroad, and as this company is the largest shipper, of course it would affect us more than all the rest of them together.

"Your idea that you could put a rate of $1.85 to Jersey City on prepared coal, and thus keep out these sizes, is a mistake. When times are dull, and that is just when we want all the business we can get, it would be a perfect delight for the individual operators and some of the companies on the Reading to absorb this 25 cents a ton or more to get the business.

"I saw Gen. Wheeler, of the Standard, this morning, and he gave us a sample order for the acid plant. As I understand it, he has bought his coal for the Bay Way plant, and can get it under the
347 Reading and B. & O. tariff. This leaves only the acid works, which uses about 20,000 tons a year, and which we can supply. Now do you propose, for this small tonnage, to open up to the Reading and its shippers the line of the Central Railroad Co. of New Jersey. * * *."

From Besler to Koons, dated January 25, 1909, marked **"Exhibit 43,"** as follows:

(Koons' file No. 13769.)

Besler wrote to Koons on Jan. 25, 1909, as follows:

"I understand the L. V. have a contract for supplying anthracite coal for the Standard Oil Co. at Constable Hook, some sizes of which the L. V. are unable to furnish, and that they are securing the coal from the P. & R.—this, notwithstanding the fact that it was our understanding that P. & R. anthracite coal could not come over into C. R. R. territory without disturbing L. & W. B. arrangements, etc. * * *."

From W. C. Johnson to J. A. Taylor, dated October 7, 1906, marked **"Exhibit 44,"** as follows:

(W. B. Besler's file 8808. Copy of original. Lehigh & Wilkes-Barre Coal Co., accounting department, Reading Terminal. W. C. Johnson, general auditor.)

PHILADELPHIA, PA., *Oct. 7, 1906.*

Mr. J. A. TAYLOR,
General Auditor, C. R. R. of N. J.,
Reading Terminal, Philadelphia.

DEAR SIR: Regarding the coal shipped by the Coleraine Colliery 348
to the N. J. Zinc Co., Hazards, on our account. This coal is to apply on the contract with the Zinc Co., and is costing us 66 cts. per ton, made up as follows: Coal, 30 cts.; tolls, 36 cts. The price which we receive from the Zinc Co. is 55 cts. per ton, made up as follows: Coal, 24½ cts.; tolls, 30½ cts. This shows a loss to us of 11 cts. per ton. During the month of September we received 1,605.09, which, at 11 cts. per ton, amounts to $176.60. Our Mr. Heilner informs me that the Central would assume this loss, reimbursing us for same by adding to the supply coal bids. The latter, I believe, was President Baer's suggestion. Will you kindly take this matter up and advise how you wish to dispose of it?

Yours, truly,

W. C. JOHNSON, *General Auditor.*

Counsel for Government offered in evidence lease dated June 15, 349
1910, between the Central Railroad Company of New Jersey and Burns Brothers (marked "Exhibit No. 45"). The lease is as follows:

This indenture of lease, made the fifteenth day of June, in the year one thousand nine hundred and ten, by and between the Central Railroad Company of New Jersey, a corporation of the State of New Jersey, party of the first part, hereinafter called the "Lessor," and Burns Bros., also a corporation of said State, party of the second part, hereinafter called the "Lessee," witnesseth:

That the Lessor, for and in consideration of the rents, covenants, agreements, terms, and conditions hereinafter mentioned and contained and by the Lessee to be paid, performed, kept, done, and observed, has leased, demised, and to farm let, and, by these presents, does lease, demise, and to farm let unto the Lessee, for the term of ten (10) years from and next ensuing after the first day of July, one thousand nine hundred and ten,

Those certain pieces or parcels of land and the pier situate, lying and being in the city of Jersey City, in the county of Hudson and State of New Jersey, and described as follows, to wit:

Parcel No. I.

That certain portion of plot B, block 2040, on the tax maps of the 350
said city of Jersey City as more clearly shown outlined in yellow on blue print marked "Plan No. (1)" hereto attached and hereby made a part hereof, together with the use of the trestle beneath the main track of the Lafayette Railroad adjoining the above-mentioned portion of said plot B.

Parcel No. II.

All that certain plot known and designated as plot A, block 60, on said tax map of said city of Jersey City, together with the two coal trestles and sidings erected thereon, as more clearly shown on blue

print marked "Plan No. (2)" hereto attached and hereby made a part hereof.

Parcel No. III.

All those two certain plots designated on said tax maps of said city of Jersey City as plots 46B and 46C, together with the two coal trestles erected on plot formerly known as 46G and now included in plot 49 in block 2145, as more clearly shown on blue print marked "Plan No. (3)" hereto attached and hereby made a part hereof; also the blacksmith shop eastwardly of and opposite plot 46C and the storage space, yard, and driveways around and adjacent to the trestles and stables; all as heretofore used and occupied by the Lessee.

Parcel No. IV.

All that certain portion of plot formerly known and designated on said tax maps of said city of Jersey City as plot 48F, now included in plot 51, block 2145, covered by Pier No. 8, and including said
351 pier and the structures erected thereon, as more clearly shown on blue print marked "Plan No. (4)" hereto attached and hereby made a part hereof.

To have and to hold the said above described pieces or parcels of land and the said pier unto the lessee, its successors and assigns, for the purposes of the receipt and delivery of coal and coke, the conduct of its coal and coke business and purposes connected and allied therewith for the said term of ten (10) years from and next ensuing after the first day of July, one thousand nine hundred and ten.

For and in consideration of the letting of said above described pieces or parcels of land and the said pier (hereinafter together referred to as the "demised premises") and as rental therefor, the Lessee, for itself and its successors and assigns, hereby covenants and agrees to and with the Lessor as follows, to wit:

I. To pay or cause to be paid to the lessor at the office of its treasurer at number 143 Liberty Street, in the city of New York, State of New York, yearly and every year during the continuance of this lease the annual sum of thirty thousand dollars ($30,000.00) in four equal quarter-yearly installments of seven thousand five hundred dollars ($7,500.00) each in advance, the first of said quarter-yearly installments to be paid at the time of the beginning of the term hereof and so every quarter-year thereafter.

II. To purchase all anthracite coal handled at and on said Demised
352 Premises from points north or west from Mauch Chunk, Carbon County, Pennsylvania, to cause all coal so there purchased to be transported thence over the lines of railroad owned, controlled, or operated by the Lessor, and to purchase all bituminous coal or coke handled at and on said Demised Premises from points in the bituminous coal-producing regions tributary to lines having joint rates and forming through routes with the lessor and its railroad, to the end that the lessor shall obtain the greatest possible haul over its line, and to the extent of the said lessee's power and control, direct the shipments of said bituminous coal and coke by way of Hauck's Switch, Allentown, or Buttonwood, Pennsylvania, or Bound Brook, New Jersey, and thence over the lines owned, controlled, or operated by the Lessor, and to so annually purchase and cause to be transported to, and handled

at, the said demised premises each and every year during the continuance of this lease not less than five hundred thousand (500,000) gross tons of coal and coke, giving preference on equal terms to coal of the Lehigh & Wilkes-Barre Coal Company; it being understood and agreed that the said annual tonnage shall be computed from the first day of July to and including the next ensuing thirtieth day of June in each and every year during the continuance hereof. This agreement to purchase said amount of coal is further conditioned upon its being purchasable at average market prices ruling from time to time at shipping ports in New York Harbor.

And in further consideration of the said letting of said demised 353
premises the lessee further covenants and agrees to and with the lessor as follows, to wit:

(*a*) That the said demised premises shall be used by the lessee solely and exclusively for the receipt and delivery of coal and coke so as aforesaid purchased and transported and the conduct of its coal and coke business and purposes connected and allied therewith.

(*b*) That it, said lessee, will not at any time hereafter, directly or indirectly, assign this lease nor sublet the demised premises or any part or parcel thereof to any person or persons, firm or firms or corporation or corporations whomsoever, or in any way charge or encumber the same, without the prior consent in writing thereto of the lessor.

(*c*) That it, said lessee, will at its own sole cost and expense keep and maintain during the continuance of this lease the water approaches to said parcel No. IV dredged to such depth as may be reasonably necessary for the proper and unimpeded conduct of its business thereat.

(*d*) That upon the termination of the said term of ten (10) years or upon the earlier termination of this lease under its provisions it, said lessee, will peaceably surrender and yield up the demised premises and every part and parcel thereof with all structures and improvements thereon, unto the lessor, its successors or assigns.

And it is further understood and covenanted and agreed by and 354
between the parties hereto as follows, to wit:

First. In the event that the Lessor, at any time or times during the continuance of this lease, shall desire to rearrange its yards, tracks, or terminal facilities upon or in the vicinity of said demised premises, or any part or parcel thereof, and for that purpose to reenter upon and occupy the same, it shall have, and it hereby reserves unto itself, its successors and assigns, the right so to do upon twelve months' prior written notice to the Lessee, its successors or assigns, which notice shall specify the demised premises or part or parcel thereof which it desires to so reenter upon and occupy, and the Lessee hereby covenants and agrees to vacate and surrender unto the Lessor possession of the premises described in such notice at the date therein fixed for that purpose, which shall not be earlier than said twelve (12) months next following the service of such notice upon it. In the event of such premises being so as aforesaid required and occupied by the Lessor, and that it is reasonably possible to furnish and provide other portions of its terminal property at said city of Jersey City of area, conveniences, equipment, and facilities substantially equal to the premises vacated, it shall so furnish and provide the same in lieu of the said vacated premises, and the provisions of this lease shall thereupon apply to the

355 premises so furnished and provided to the same extent as to those so vacated and surrendered up.

In case the Lessor can not so furnish and provide such other portions of its terminal property in lieu of those vacated and surrendered as above provided, the Lessee may thereupon, at its option, terminate this lease, unless (1) the rentals (2) the minimum tonnages agreed by it to be paid and handled as above set out shall be satisfactorily mutually adjusted as to the remaining parts and parcels of said demised premises.

Second. If the Lessee shall fail to purchase, cause to be transported, and handled in any year during the continuance hereof the minimum number of tons of coal and coke at said demised premises as hereinabove provided (unless such minimum tonnage shall have been reduced by strikes or other like contingencies beyond its control), the Lessor shall have the right, at its option, to terminate this lease at the expiration of any year in which such failure shall occur upon first giving to the Lessee six (6) months' notice of its intention to so terminate the same, at the expiration of which said period of six (6) months, following the giving of such notice, this lease shall cease and terminate; provided, however, that in case the Lessee shall be prevented by strikes or other like contingencies beyond its control or by any fault of the Lessor from carrying out the provisions as to said annual minimum tonnage there shall be a proportionate abatement
356 in the said tonnage for that year and provided further that if during said period of six (6) months next ensuing after giving such notice the Lessee shall so purchase, cause to be transported, and handle a sufficient amount of coal and coke, in addition to the proportionate tonnage for the then current year, at said demised premises to make up the deficit in the tonnage of the preceding year, then this lease shall continue notwithstanding such notice, which said notice shall thereupon become ineffective.

Third. In case of failure of the Lessee to pay any installments of rental above reserved at the time when due and payable and in the manner as hereinabove provided, such failure continuing for thirty (30) days thereafter, or in case of breach by said Lessee, other than as above provided, of any of the covenants, conditions, and agreements herein contained and by it to be fulfilled, kept, and performed, such breach continuing uncompensated for thirty (30) days thereafter, then and in any such event the Lessor may, at its option, terminate this lease upon giving to the Lessee thirty (30) days' notice of its intention so to do, upon the expiration of which said period of thirty (30) days next following the giving such notice this lease shall cease and terminate.

Fourth. The Lessor will pay all taxes that may be levied upon the demised premises or any part thereof and will at its own expense maintain and keep in good, serviceable, and safe repair all structures and facilities upon the said demised premises.

357 Fifth. The Lessee now being in possession of the demised premises and all parts and parcels thereof under various leases thereof to, or agreements with, it or to or with others, to all whose interests and rights therein and thereunder it claims and represents to have succeeded, it is further understood and agreed that this lease shall supersede and take the place of all such other leases and agreements, written or verbal, relative to, or affecting, said demised premises and

all parts and parcels thereof from and after the date of the inception of the term herein and hereby created, to wit, from and after the first day of July, 1910, from and after which said last-named date all such other leases and agreements shall cease and be of no effect, and shall terminate on said last-named date, following and after which the possession by the Lessee of said demised premises and all parts and parcels thereof shall be solely under this lease and subject to the provisions hereof, such termination of said other leases and agreements, however, not affecting any claims of either party against the other then existing under the same.

Sixth. It is mutually covenanted and agreed that the Lessor, as a part of its transportation duty, will, during the continuance of this demise, deliver all coal and coke (so consigned) by placing the loaded cars upon the trestles or pier situate upon the demised premises and 358
remove the empty cars therefrom without charge.

Seventh. The Lessee will, at its own sole cost and expense, furnish all the labor and other services required to unload and ship the coal, but at the pier on parcel IV the Lessor agrees to pay to the Lessee for such labor and services the sum of twelve (12) cents per ton on all bituminous coal and steam sizes of anthracite coal and the sum of fifteen (15) cents per ton on all prepared sizes of anthracite coal.

Eighth. The word "ton" as used in this agreement shall be deemed to be a gross ton of 2,240 pounds and the word "coal" to include both bituminous and anthracite coal.

In witness whereof the parties hereto have caused these presents to be duly and properly executed in their respective corporate names and under their respective corporate seals by their executive officers thereunto duly authorized the day and year first aforesaid.

THE CENTRAL RAILROAD COMPANY
OF NEW JERSEY,
By (Sgd.) W. G. BESLER, *Vice President.*

Attest:
(Sgd.) G. O. WATERMAN, [SEAL.]
Secretary.

BURNS BROS.,
By (Sgd.) M. F. BURNS, *President.*

Attest:
(Sgd.) W. R. BELKNAP, *Secretary.*

Counsel for Government called on counsel for the Reading Com- 359
panies to produce letter from George F. Baer to James McCrea, dated May 21, 1907.

Government's counsel offered in evidence extract from memorandum in the Lehigh and New England Railroad Company's records, marked "**Exhibit No. 46,**" as follows:

[L. & N. R. R. President's file E-1710-54-1.]

OCTOBER 4, 1910.

(1) Estimate of increase on western coal now moving via Philadelphia & Reading on which we do not receive any allowance account of the freight rate—17,000 tons at 25 cts. per ton—$4,375.00. Prob-

ably no increase in service over what we now perform in delivering coal to P. & R. at Tamaqua.

(2) By having our own railroad connection with the mines, we can have rates put in to practically all points and enable us to place our coal on the market on the same basis as other coal companies, who accept very small profits on the coal as their railroads make the profit out of the freight rates.

(3) * * *

Counsel for Government read in evidence extracts from pamphlet entitled **"The Production of Coal in 1912,"** issued by the United States Geological Survey.

It is understood that the defendants may read into the evidence extracts from the same volume, if they so desire.

From page 23, as follows:

The areas in which anthracite is produced are confined almost exclusively to the eastern part of Pennsylvania and usually when the
360 anthracite fields of the United States are referred to those of eastern Pennsylvania are meant. These fields are included in the counties of Susquehanna, Lackawanna, Luzerne, Carbon, Schuylkill, Columbia, Northumberland, Dauphin, and Sullivan, and underlie an area of about 480 square miles. In addition to these well-known anthracite fields of Pennsylvania there are two small areas in the Rocky Mountain region where the coal has been locally anthracited, although the production from these districts has never amounted to as much as 100,000 tons in any one year.

From page 22, as follows:

Production of coal in the United States from 1870 to the close of 1912, in short tons.

PENNSYLVANIA ANTHRACITE.

1870	15,664,275	1892	52,472,504
1871	19,342,057	1893	53,967,543
1872	24,233,166	1894	51,921,121
1873	26,152,837	1895	57,999,337
1874	24,818,790	1896	54,346,081
1875	22,485,766	1897	52,611,680
1876	22,793,245	1898	53,382,644
1877	25,660,316	1899	60,418,005
1878	21,689,682	1900	57,367,915
1879	30,207,793	1901	67,471,667
1880	28,649,812	1902	41,373,595
1881	31,920,018	1903	74,607,068
1882	35,121,256	1904	73,156,709
361 1883	38,456,845	1905	77,659,850
1884	37,156,847	1906	71,282,411
1885	38,335,974	1907	85,604,312
1886	39,035,446	1908	83,268,754
1887	42,088,197	1909	81,070,359
362 1888	46,619,564	1910	84,485,236
1889	45,546,970	1911	90,464,067
1890	46,468,641	1912	84,361,508
1891	50,665,431		

From page 166, as follows:

Anthracite.—Total production in 1912, 75,322,855 long tons (equivalent to 84,361,598 short tons); spot value, $177,622,626.

Counsel for Government read in evidence extracts from House Document No. 1442, Sixty-second Congress, third session, entitled: "**Increase in Prices of Anthracite Coal following the Wage Agreement of May 20, 1912, Prepared under the Direction of the Commissioner of Labor,**" as follows:

From page 55, as follows:

The shipments to tidewater in 1910 and 1911 (the only years for which data are available) constituted, respectively, 24.4 and 25 per cent of the total shipments from the anthracite region for those years.

From page 89, as follows:

Total annual shipments of anthracite coal, 1890–1911.

[From bulletin of United States Geological Survey, The Production of Coal in 1910, p. 190. Tons of 2,240 pounds are used.]

1890	36,615,459	1901	53,568,601
1891	40,448,336	1902	31,200,890
1892	41,893,340	1903	59,362,831
1893	43,089,537	1904	57,492,522
1894	41,391,200	1905	61,410,201 363
1895	46,511,477	1906	55,698,595
1896	43,177,485	1907	67,109,393
1897	41,637,864	1908	64,665,014
1898	41,899,751	1909	61,969,885
1899	47,665,204	1910	64,905,786
1900	45,107,484	1911	69,954,299

Counsel for Government read in evidence from pamphlet entitled "**The Production of Coal in 1912,**" extract from page 180, as follows:

Monthly shipments of anthracite, 1908–1912, in long tons.

Month.	1908	1909	1910	1911	1912
January	5,618,339	5,183,345	5,306,618	5,904,117	5,763,606
February	4,503,756	4,576,004	5,031,784	5,070,948	5,875,968
March	4,766,158	6,332,474	5,174,166	5,996,894	6,569,687
April	5,987,221	5,891,176	6,224,396	5,804,915	266,625
May	6,088,116	5,063,873	5,679,661	6,317,352	1,429,357 364
June	5,704,852	4,904,858	5,398,123	6,215,357	6,191,646
July	4,541,506	4,020,765	4,202,059	4,804,065	6,285,153
August	4,599,093	4,198,273	4,996,044	5,531,796	6,576,591
September	5,211,047	4,116,120	4,967,516	5,730,935	5,876,496
October	5,977,497	5,579,759	5,622,095	6,269,179	6,665,321
November	5,839,491	6,027,800	6,071,746	6,193,314	6,165,536
December	5,827,938	5,775,438	6,231,578	6,115,427	5,944,502
Total	64,665,014	61,969,885	64,905,786	69,954,299	63,610,578

Counsel for Government read in evidence extract from House Document No. 1442, Sixty-second Congress, third session, entitled, **"Increase in Prices of Anthracite Coal, etc,"** page 90, as follows:

INCREASE IN PRICES OF ANTHRACITE COAL.

Tons of anthracite coal shipped by each railroad during first 11 months of 1910, 1911, and 1912, and per cent of increase or decrease in 1912, as compared with 1910 and 1911.

Railroad companies.	Tons of anthracite coal shipped during January to November.			Percentage increase or decrease.	
	1910	1911	1912	1912 compared with 1911.	1912 compared with 1910.
Philadelphia & Reading Ry	11,181,353	12,027,031	11,628,506	3.31	4.0
Lehigh Valley R. R	10,144,002	11,093,295	10,682,836	7.06	5.3
365 Central R. R. of New Jersey	7,623,016	8,397,859	7,581,998	9.71	.1
Delaware, Lackawanna & Western R. R.	8,736,977	9,042,372	8,214,645	9.15	5.9
Delaware & Hudson	5,974,235	6,613,806	5,762,209	12.88	3.5
Penna. R. R	5,549,310	5,893,930	5,004,832	15.09	9.8
Erie R. R	6,884,945	8,078,080	6,768,147	16.22	1.7
N. Y. Ontario & Western Ry	2,529,760	2,292,510	2,022,843	11.76	20.0
Total	58,674,208	63,838,872	57,666,076	9.67	1.7

Counsel for Government read in evidence extract from pamphlet entitled **"The Production of Coal in 1910,"** issued by the United States Geological Survey, from page 184, as follows:

Anthracite production in 1909 and 1910, by counties, in long tons.

County.	Shipped.	Sold to local trade and employees.	Used at mines for steam and heat.	Total.
1909.				
Carbon	1,961,362	77,945	260,872	2,300,179
Columbia	847,665	21,713	118,503	987,881
Dauphin	643,040	23,871	165,022	832,033
Lackawanna	16,396,270	593,772	1,533,918	18,523,960
Luzerne	24,426,413	781,827	2,864,321	28,072,561
Northumberland	4,630,175	106,728	622,632	5,349,535
Schuylkill	12,785,329	240,617	2,073,031	15,118,977
Sullivan	525,644	6,234	39,086	570,964
Susquehanna & Wayne	471,881	8,399	41,440	521,720
River dredges	9,136	85,243	1,810	96,289
Total	62,697,495	1,946,069	7,720,685	72,384,249
366 1910.				
Carbon	2,438,321	64,810	299,734	2,802,865
Columbia	728,370	12,837	104,141	845,348
Dauphin	602,948	55,931	132,364	791,243
Lackawanna	17,390,927	453,670	1,721,768	19,566,365
Luzerne	24,886,361	732,449	2,928,953	28,547,763
Northumberland	4,960,463	119,408	633,398	5,713,269
Schuylkill	13,678,396	279,137	1,986,641	15,944,174
Sullivan	518,809	6,806	39,175	564,983
Susquehanna	508,086	9,935	47,373	565,394
River dredges	22,263	69,017	553	91,833
Total	65,735,024	1,804,082	7,894,140	75,433,266

Counsel for Government offered in evidence certified copies under the seal of the Interstate Commerce Commission of the interstate and through routes in which the Philadelphia and Reading Railway Company, the Central Railroad Company of New Jersey, and the

Lehigh and New England Railroad Company are originating parties to New York, Baltimore, and Washington and also to New England points (marked "**Exhibits Nos. 47 and 48**").

Defendants' counsel object to the admission of secondary evidence of these tariffs. The statutes provide what shall be evidence of the tariffs, and the defendants object to anything being offered except the tariffs.

Mr. COUDERT. The Government offers these statements because they have been made by the Interstate Commerce Commission and by their experts, and that the tariffs themselves are very voluminous, 367
containing a great deal of matter that can have no relevancy to this case, and, if there are any inaccuracies therein, they can be and should be pointed out by counsel for the defendants.

These copies will be found spread on the record at pages 279 and 296.

Counsel for Government offered in evidence **answers filed in re investigation of rates, practices, rules, and regulations governing the transportation of anthracite coal before the Interstate Commerce Commission, docket No. 4914, and interposed on behalf of the Philadelphia and Reading Railway Company,** as follows: 368

Answer to question No. 1, page 3, J.

J) Information indicated in form next following concerning 50 largest holders in the aggregate of voting securities at date of last closing of stock books. 369

Name.	Address.	Number of votes.	Par value of stock held.		Other voting securities held.	
			Common.	Preferred.	Par value.	Name of security.
Central Trust Company of New York as trustee under mortgage of Reading Company and the Philadelphia & Reading Coal and Iron Company, dated January 5, 1897.	54 Wall Street, New York City.	849,534	$42,476,700	None.	None.	None.
Reading Company	Reading Terminal, Philadelphia, Pa.	75	3,750	None.	None.	None.
George F. Baer	do.	3	150	None.	None.	None.
George F. Baker	2 Wall Street, New York City.	3	150	None.	None.	None.
Henry A. du Pont	100 Maryland Avenue, Wilmington, Del.	3	150	None.	None.	None.
Henry C. Frick	111 Broadway, New York City.	3	150	None.	None.	None.
Edward T. Stotesbury	Chestnut and Fifth Sts., Philadelphia, Pa.	3	150	None.	None.	None.
Peter A. B. Widener	Land Title Building, Philadelphia, Pa.	3	150	None.	None.	None.
Daniel Willard	Baltimore, Md.	3	150	None.	None.	None.
George M. Dallas	1514 Pine Street, Philadelphia, Pa.	1	50	None.	None.	None.
James M. Landis	1001 Chestnut Street, Philadelphia, Pa.	1	50	None.	None.	None.
Frederick Reel	Reading Terminal, Philadelphia, Pa.	1	50	None.	None.	None.
Edwin F. Smith	Commonwealth Trust Building, Philadelphia, Pa.	1	50	None.	None.	None.
		849,634	42,481,700			

370 **Answer to question No. 22—table showing revenue from transportation and revenue from operation other than transportation for the Philadelphia & Reading Railway Company for the years 1910 to 1912, inclusive, as follows:**

371 PHILADELPHIA & READING RAILWAY COMPANY.

	Years ended June 30th—				
	1908	1909	1910	1911	1912
I.—Revenue from transportation.					
1. Freight revenue:					
(a) Anthracite coal	$13,026,030.53	$12,185,554.66	$11,628,868.25	$12,107,840.70	$11,543,641.3
(b) Other freight	19,054,167.49	19,059,399.35	23,632,060.19	23,273,106.69	23,997,585.6
2. Passenger revenue	6,211,933.58	6,182,421.45	7,059,476.94	6,995,801.30	6,908,759.9
3. Excess baggage revenue	25,520.79	27,936.01	28,786.04	30,441.29	33,190.2
4. Parlor and chair car revenue	0	0	0	0	0
5. Mail revenue	117,801.32	118,511.61	118,136.60	118,277.75	117,064.9
6. Express revenue	607,407.69	559,873.98	589,421.20	668,591.81	662,675.9
7. Milk revenue on passenger trains	213,286.68	200,629.70	262,611.18	294,435.87	313,673.1
8. Other passenger train revenue	87,414.76	86,394.74	88,701.16	97,414.63	120,449.6
Total passenger service revenue (Nos. 2 to 8)	7,263,364.82	7,175,767.49	8,147,133.12	8,204,962.65	8,155,821.9
9. Switching revenue	208,145.05	257,313.94	395,190.95	415,529.92	356,449.9
10. Special service train revenue	10,429.55	35,043.55	14,678.49	30,308.36	14,463.7
11. Miscellaneous transportation revenue	1,123.98	51,222.40	46,247.81	13,220.51	4,629.0
Total revenue from transportation (Nos. 1 to 11)	39,563,261.47	38,764,301.39	43,864,178.81	44,044,968.83	44,072,590.0
II.—Revenue from operation other than transportation.					
12. Station and train privileges	71,726.81	66,260.96	72,725.80	69,989.86	69,411.2
13. Parcel-room receipts	19,425.95	20,419.70	22,775.75	24,872.95	25,870.9
14. Storage (mdse. freight)	2,089.03	2,229.31	2,233.01	2,793.83	2,488.9
15. Storage (baggage)	3,615.90	3,011.89	3,600.20	4,533.90	4,241.2
16. Car service	159,283.58	88,952.45	170,278.99	130,733.81	137,764.0
17. Telegraph and telephone	116.54	5,107.21	6,719.96	6,951.92	8,464.2
18. Rents of buildings and other property	14,807.30	55,182.00	845.41	13,074.99	12,195.0
19. Miscellaneous	44,550.41	54,768.74	73,247.75	93,672.14	167,884.1
Total revenue from operation other than transportation	315,620.45	295,932.26	350,736.05	320,473.51	403,933.9
Total operating revenues	39,878,881.92	39,060,233.65	44,214,914.86	44,365,442.34	44,476,524.7

Answer to question No. 30—showing the tonnage and the tons carried 1 mile, and the revenue, for the years 1900, 1905, 1910, and 1912, on anthracite coal, or other freight and upon all freight, as follows: 372

PHILADELPHIA & READING RAILWAY COMPANY. 373

	Anthracite coal.		
	Tons.	*Tons 1 mile.*	*Revenue.*
1900	11,953,263.06	1,180,499,530.12	$9,552,961.19
1905	13,472,994.02	1,360,744,700.03	12,368,786.06
1910	12,241,165.12	1,285,559,671.04	11,628,868.25
1912	12,571,938.09	1,342,433,070.05	11,543,641.30

	Other freight.		
	Tons.	*Tons 1 mile.*	*Revenue.*
1900	19,276,502.17	1,665,097,570.14	$11,568,843.35
1905	28,981,744.00	2,670,528,650.00	17,831,100.96
1910	38,090,594.12	3,667,323,462.10	23,632,060.19
1912	39,294,760.13	3,819,827,211.01	23,997,585.48

	All freight.		
	Tons.	*Tons 1 mile.*	*Revenue.*
1900	31,229,766.03	2,845,597,101.06	$21,121,804.54
1905	42,454,738.02	4,031,273,350.03	30,199,887.02
1910	50,331,760.04	4,952,883,133.14	35,260,928.44
1912	51,866,699.02	5,162,260,281.06	35,541,226.78

Answer to question No. 33—showing the anthracite coal tonnage transported to points on and via Philadelphia and Reading Railway Company, exclusive of shipments from storage yards, for the year ending June 30, 1912, as follows: 374

PHILADELPHIA & READING RAILWAY COMPANY. 375

Anthracite coal tonnage transported to points on and via Philadelphia & Reading Railway Company (exclusive of shipments from storage yards) for the year ending June 30th, 1912.

	Paying freight.	Company's use.
1911.	*Gr. tons cwt.*	*Gr. tons cwt.*
July	712,119.07	68,821.00
August	768,003.09	60,389.13
September	892,623.06	95,138.12
October	1,101,641.18	125,642.18
November	1,117,402.12	113,181.13
December	1,093,152.07	123,306.03
1912.		
January	1,092,500.14	75,017.00
February	1,115,875.06	69,271.01
March	1,354,106.10	149,931.17
April	24,421.02	14,940.11
May	133,270.00	1,493.11
June	1,084,806.04	185,963.02
Total	10,489,922.15	1,083,093.19

376 Answer to question No. 34—table showing shipments of anthracite coal for the month of November, 1912, segregated by sizes and shippers, as follows:

377 PHILADELPHIA & READING RAILWAY COMPANY.

Sizes.	Commercial.		Company's use.
	P. & R. C. & I. Co.	All other shippers.	P. & R. C. & I. Co.
	Gross tons cwt.	*Gross tons cwt.*	*Gross tons cwt.*
Prepared	597,158.10	149,614.06	27,075.08
Pea	144,327.07	39,270.08	14,598.11
Smaller than pea	190,340.03	79,109.12	160,943.11
Total	931,826.00	267,994.06	142,617.07

378 Answer to question No. 38—table showing shipments from collieries and washeries named in Philadelphia & Reading Railway Company I. C. C. A–434, to Philadelphia, Port Richmond, and Port Reading, for the month of November, 1912, as follows:

379

	Mileage.	Tons.	Gross tons, cwt.
Philadelphia, Pa.	110.2 from Tamaqua	5,758.18	
	110.3 from St. Clair	113,798.10	
	112.2 from Cressona	33,589.19	153,147.07
Port Richmond, Pa. (tide)	110.2 from Tamaqua	213.13	
	110.3 from St. Clair	97,723.10	
	112.2 from Cressona	43,527.11	141,464.14
Port Reading, N. J.	174.7 from St. Clair	100,314.05	
	167.6 from Cressona	78,556.08	
	174.6 from Tamaqua	711.14	
	174.6 from Tamaqua (local)	967.00	180,549.07

380 Answer to question No. 28—statement showing for the Philadelphia & Reading Railway Company for the years 1900, 1905, and 1908 to 1912, inclusive, of revenues, expenses, and dividends, as follows:

381 PHILADELPHIA & READING RAILWAY COMPANY.

	Years ended June 30th—			
	1900	1905	1908	1909
Total operating revenues	$26,109,733.53	$36,832,069.91	$39,878,881.92	$39,060,233.65
Total operating expenses	15,349,631.99	19,511,143.87	25,458,296.06	23,825,678.53
Total revenues (outside operations)	1,674,017.16	2,677,417.46	2,960,944.63	1,818,133.90
Total expenses (outside operations)	880,763.50	2,013,768.49	1,937,288.53	1,381,821.65
Total operating income	11,001,866.84	17,365,293.68	14,688,563.32	14,836,328.85
Total other income	0	0	1,762,057.32	770,715.52
Total gross corporate income	11,001,866.84	17,365,293.68	16,450,620.64	15,607,044.40
Total net corporate income	745,309.20	7,359,162.22	6,345,639.43	4,559,545.83
Total profit and loss surplus	745,309.20	7,359,162.22	6,345,639.43	4,559,545.83
Total mileage of single track operated at close of year	1,000.19	1,015.13	1,006.60	1,024.03

PHILADELPHIA & READING RAILWAY COMPANY—Continued.

	Years ended June 30th—		
	1910	1911	1912
Total operating revenues	$44,214,914.86	$44,365,442.34	$44,476,524.79
Total operating expenses	26,563,617.62	27,675,842.09	28,516,878.09
Total revenues (outside operations)	1,871,897.91	1,957,888.28	1,934,046.12
Total expenses (outside operations)	1,541,937.76	1,632,094.30	1,628,885.38
Total operating income	16,966,282.48	15,903,392.05	15,207,813.24
Total other income	883,208.45	972,424.65	789,736.41
Total gross corporate income	17,849,490.93	16,875,816.70	15,997,549.65
Total net corporate income	6,632,375.35	4,330,408.69	5,508,838.49
Total profit and loss surplus	6,651,293.82	3,283,080.42	5,482,248.53
Total mileage of single track operated at close of year	1,022.10	1,014.50	1,015.16

Dividend paid in fiscal year—
June 30, 1904, $2,400,000.00—from surplus of June 30, 1903.
June 30, 1905, 4,000,000.00—from surplus of June 30, 1904.
June 30, 1906, 6,000,000.00—from surplus of June 30, 1905.
June 30, 1907, 6,000,000.00—from surplus of June 30, 1906.
June 30, 1908, 6,000,000.00—from surplus of June 30, 1907.
June 30, 1909, 5,000,000.00—from surplus of June 30, 1908.
June 30, 1910, 5,000,000.00—from surplus of June 30, 1909.
June 30, 1911, 5,000,000.00—from surplus of June 30, 1910.
June 30, 1912, 6,372,255.00—from surplus of June 30, 1911.

Answer to question No. 39—statement showing all collieries served by the Philadelphia and Reading Railway Company, names of shippers, and output, as follows: 382

PHILADELPHIA & READING RAILWAY COMPANY. 383

Colliery or washery.	Name of shipper.	Miles distant from concentration points.				Tamaqua.	Cressona.	Output.
		Shamokin.	St. Clair.	Mahanoy Plane.	Haucks.			
North Franklin	P. & R. C. & I. Co.	8.2	3.8					26,270.19
Katharine	Troverton Coal Co.	10.8	38.2					13,542.15
Bear Valley	P. & R. C. & I. Co.	3.1	33.5					27,948.01
Burnside	do	2.3	33.3					34,627.07
Henry Clay	do	1.1	29.8					29,923.02
Buck Ridge No. 2	Buck Ridge Mining Co.	2.6	28.9					2,197.17
Corbin	Excelsior Coal Co.	4.7	27.1					14,511.10
Excelsior	do		26.7					5,212.18
Enterprise	Enterprise Coal Co.	7.2	25.9					19,849.14
Locust Gap	P. & R. C. & I. Co.	10.1	20.6		26.5			44,885.05
Alaska	do	7.9	2.3					29,493.19
Ryan & Bergen	Ryan & Bergen		30.6					92.15
Natalie	Colonial Collieries Co	8.1	22.3					12,356.16
Reliance	P. & R. C. & I. Co.	8.8	23.9					18,387.10
Potts	do	12.4	18.7					29,927.07
Bast	do	20.5	11.8					22,188.13
Hammond	do		9.7	26.4				35,221.07
West Shenandoah	do		12.6	29.3				51,060.01
Oxford Coal Co.	Maderia Hill & Co.		11.2	27				4,477.11
Cambridge	Cambridge Coal Co.		13.2	29				8,230.04
Shenandoah City	P. & R. C. & I. Co.		12.8	29.5				34,491.02
Kehley Run	Thomas Colliery Co.		14.6	30.8	18.8			28,204.00
Hudson	H. A. Smith & Co.		12					612.03
Stanton	Brookwood Coal Co.		7.8	1.5				6,530.06
Girard, Bear Ridge	W. R. McTurk Coal Co.		8.7	21.6				9,787.08
Gilberton	P. & R. C. & I. Co.		9.1	26.1				13,075.13
Draper	do		9.8	26.8				14,909.00
Boston Run	do		10.5	27				15,833.02
St. Nicholas	do		11	27.9	8.8			45,212.06
Suffolk	do		10.6	28.1				
Maple Hill	do		11.8	27.6	9.2	14.1		69,722.11
Ellangowan	do		12.2	28.8				44,911.15

PHILADELPHIA & READING RAILWAY COMPANY—Continued.

Colliery or washery.	Name of shipper.	Miles distant from concentration points.						Output.
		Shamokin.	St. Clair.	Mahanoy Plane.	Haucks.	Tamaqua.	Cressona.	
Tunnel Ridge	P. & R. C. & I. Co.		11.8	28.7	7.7			12,686.16
Mahanoy City	do		13.5	30.3				20,314.07
North Mahanoy	do		13.6	30.4	6.5	11.4		33,784.19
Morea	Weston Dodson & Co		3.4					17,020.12
Pine Hill	Pine Hill Coal Co		3.4					8,589.08
Lytle	Lytle Coal Co		3.4					6,137.12
East Lehigh	Shepp Bros					.3		2,850.09
Bell	Gorman & Campion		10.7					3,338.07
Silver Hill	Phillips Coal Co		7.4					2,749.10
Maryd	Maryd. Coal Co		14.1					9,276.5
Lucie R	Pt. Carbon Coal Co		3.1					3,318.11
Brockton	Sch. Lehigh Coal Co		10.6					4,773.12
Silver Creek	P. & R. C. & I. Co		8.7					42,248.12
Eagle Hill	do		5.2					20,842.16
384 Mount Hope	Mt. Hope Coal Co		4.5					5,447.15
St. Clair	St. Clair Coal Co		5.5					28,362.18
Howard	White & Co		4.5					2,963.08
Wadesville	P. & R. C. & I. Co		4.8					24,141.06
Laurel Run	Butcher Creek Coal Co.						11.6	1,514.15
Ellsworth	J. H. Davis						12.3	1,994.17
Pine Knot	P. & R. C. & I. Co						10.8	45,110.14
Buck Run	Buck Run Coal Co						14	18,791.12
Oak Hill	Oak Hill Coal Co						9	22,877.06
Phoenix Park No. 3							10.1	16,413.15
Black Heath No. 2	W. W. Scott Est						9.8	21.12
Otto	P. & R. C. & I. Co						11.2	24,448.18
Good Spring	do						22.3	27,177.04
Lincoln	do						24.8	37,507.08
W. Brookside	do						27.5	26,181.19
Coleraine	A. S. Van Winkle & Co.				14.8	11		11,606.14
Schuylkill Haven Jig House.	P. & R. C. & I. Co						12.1	96,838.11
Wolf Creek	Wolf Creek Coal Co						8.9	3,188.05

385 Answer to question No. 25—statement showing the revenue from the operations of the Port Richmond Coal Docks, as follows:

PORT RICHMOND COAL DOCKS.

A—Location	
B—Revenue from anthracite coal operations	$249,324.40
C—Revenue from other operations	387,594.10
D—Total revenue	636,918.50
E—Operating expenses anthracite coal operations	
F—Operating expenses other operations	
G—Total operating expenses	333,200.83
H—Net revenue	303,717.67

386 Answer to question No. 26—statement showing the revenue from Port Richmond Harbor Terminal transfers, as follows:

PHILADELPHIA & READING RAILWAY COMPANY.

PORT RICHMOND HARBOR TRANSFER.

A—Location	
B—Revenue from anthracite coal operations	$62,862.75
C—Revenue from other operations	410,589.57
D—Total revenue	473,452.32
E—Operating expenses anthracite coal operations	
F—Operating expenses other operations	
G—Total operating expenses	304,804.33
H—Net revenue	168,647.99

Answer to question No. 31—statement showing transshipment allowance at Port Richmond, with the names of the shippers, as follows: 387

PHILADELPHIA & READING RAILWAY COMPANY. 388

TRANSSHIPMENT AT PORT RICHMOND.

Name of shipper.	Year ended June 30th, 1912.					
	July.	August.	September.	October.	November.	December.
P. & R. C. & I. Co.	$38,397.06	$42,033.74	$37,727.77	$53,439.08	$50,226.67	$51,270.26
O. Darlington & Co.	47.61	111.60		46.85	51.90	
W. C. Kirk & Co.	220.70		173.38			
W. A. Marshall & Co.	212.40					
Weston Dodson & Co.	1,050.87	2,042.08	689.65	513.95	1,071.17	
Chas. D. Norton Co.	455.09	201.98	853.41	727.70	762.53	559.00
Smith, Lineweaver & Co.	45.30			227.50	295.45	374.08
Lehigh Coal & Navigation Co.	46.82	421.70	1,890.52		665.16	2,898.38
H. Gawthrop & Co.	54.07		565.85	109.36	104.20	128.80
W. R. McTurk & Co.	237.75	136.41	289.27	217.84	179.00	
Madeira, Hill & Co.	1,515.30	2,510.13	1,338.35	1,541.80	606.50	1,431.15
Thorne, Neale & Co.	246.48	508.88	346.43	243.25	429.68	46.75
Geo. W. Edmonds & Co.	106.25					
Chas. Warner Co.					53.75	
Maryd. Coal Co						348.00
McClennan Coal & Coke Co.						
Swain Bros.	57.00	8.40		60.30	91.20	
Williams, Darnell & Co.	147.70					
R. & P. C. & I. Co.		93.60				
Whitney & Kemmerer		242.00		133.11		
Peale, Peacock & Kerr		36.80		268.50	380.25	178.00
Susquehanna Coal Co.		36.05			45.35	
P. Heilner & Son		54.81	168.43	243.90		208.05
Slattery Bros.		5.54	24.80			231.30
Est. A. S. Van Winkle				166.20	70.50	265.60
Tyler Coal & Coke Co.				90.90		178.94
Mt. Hope Coal Co.				49.20	45.43	
Total	42,840.40	48,443.72	44,067.86	58,079.44	55,078.74	58,118.31

Name of shipper.	Year ended June 30th, 1912.						
	January.	February.	March.	April.	May.	June.	Total.
P. & R. C. & I. Co.	$44,817.24	$36,600.98	$51,064.30	$19,360.80	$8,735.65	$58,679.84	$492,353.39
O. Darlington & Co.			103.01				360.97
W. C. Kirk & Co.						128.75	522.83
W. A. Marshall & Co.							212.40
Weston Dodson & Co.	873.25	348.90		1,976.16	391.35		8,957.38
Chas. D. Norton Co.	735.80	265.66	102.35		2.10	229.21	4,894.83
Smith, Lineweaver & Co.	529.55	259.14	78.00			421.30	2,230.22
Lehigh Coal & Navigation Co.	1,172.40	2,027.35	4,066.04	1,380.52	486.74	542.61	15,598.24
H. Gawthrop & Co.	41.80		108.30			76.95	1,189.33
W. R. McTurk & Co.	97.75					400.24	1,558.26
Madeira, Hill & Co.	1,341.40	1,073.50	1,629.66	483.75	244.35	2,380.50	16,096.39
Thorne, Neale & Co.	427.55	259.20	387.14	93.90		185.80	3,175.06
Geo. W. Edmonds & Co.						114.00	220.25
Chas Warner Co.							53.75
Maryd. Coal Co	84.60	303.90	198.90			154.50	1,089.90
McClennan Coal & Coke Co.			33.20				33.20
Swain Bros.							216.90
Williams, Darnell & Co.							147.70
R. & P. C. & I. Co.							93.60
Whitney & Kemmerer			141.00	112.80		187.20	816.11
Peale, Peacock & Kerr							863.55
Susquehanna Coal Co.		1,888.63	3,451.45	223.24		1,001.91	6,646.63
P. Heilner & Son			60.75				735.94
Slattery Bros.		138.00	274.00			20.50	694.14
Est. A. S. Van Winkle	148.30	73.80	154.50	6.30		127.95	1,013.15
Tyler Coal & Coke Co.	792.70	137.85	88.50				1,288.89
Mt. Hope Coal Co.			27.00				121.63
Total	51,062.34	43,376.91	61,968.10	23,637.47	9,860.19	64,651.16	561,184.64

389 Answer to question No. 36—statement showing coal shipments to Port Reading for the month of November, 1912, with the number of cars and the gross revenue, as follows:

PHILADELPHIA & READING RAILWAY COMPANY.

Anthracite-coal shipments to Port Reading, N. J., during the month of November, 1912.

Total number of cars		5,280.00
Total gross tons		179,582.07
Average tonnage per carload	gross tons..	34.00
Gross revenue		$327,645.04
390 Average revenue per car load		$62.050

Practically 100 per cent of cars returned empty.

391 Answer to question No. 37—statement showing rates to New York Harbor via Port Reading and Port Liberty, including forty-cent transfer allowance, as follows:

PHILADELPHIA & READING RAILWAY COMPANY.

FORT READING, N. J.

(Page 1.)

P. & R. Railroad Tariff I. C. C. A. 29, taking effect September 7th, 1896.

	From collieries shipping via—					
	Schuylkill Haven & Tamaqua.			Pine Grove.		
	Prepared sizes.	Pea coal.	Smaller sizes.	Prepared sizes.	Pea coal.	Smaller sizes.
To New York, N. Y., within lighterage limits via Pt. Reading, N. J., discharged	195	180	160	210	195	180
Allowance for barge service and discharging in N. Y. Harbor	40	40	40	40	40	40
Net rate, including dumping into vessels	155	140	120	170	155	140

The rates shown above were in effect during the month of November, 1897, 1898, 1899, and 1900.

P. & R. Ry. Tariff I. C. C. A. 190, taking effect September 25, 1901.

	From collieries shipping via—							
	Schuylkill Haven & Tamaqua.				Pine Grove.			
	Prepared sizes.	Pea coal.	Buck. No. 1.	Buck. No. 2.	Prepared sizes.	Pea coal.	Buck. No. 1.	Buck. No. 2.
To New York Harbor within lighterage limits via Pt. Rdg. discharged	195	180	165	150	210	195	180	165
Allowance for barge service and discharging in N. Y. Harbor	40	40	40	40	40	40	40	40
Net rate, including dumping into vessels	155	140	125	110	170	155	140	125

The rates shown above were in effect during the month of November, 1901, 1902, 1903, 1904, and 1905.

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PHILADELPHIA & READING RAILWAY COMPANY. 392

(Page 2.)

PORT READING, N. J.

P. & R. Ry. tariff I. C. C. A. 233, taking effect September 4, 1906.

	Prepared sizes.	Pea coal.	Buck. No. 1.	Buck. No. 2.
To New York, N. Y., within lighterage limits via Pt. Rdg. discharged	195	180	165	150
Allowance for boat freight and discharging in N. Y. Harbor, etc., per tariff	40	40	40	40
Net rate, including dumping into vessels	155	140	125	110

The above rates were in effect during the month of November, 1906, 1907, 1908, 1909, 1910, and 1911.

P. R. Ry. tariff I. C. C. A. 432, taking effect September 15, 1912.

	Prepared sizes.	Pea coal.	Buck. No. 1.	Buckwheat No. 2, smaller.
To Pt. Rdg. Coal Piers, N. J.	195	180	165	150
Allowance	40	40	40	40
Net rate, including dumping into vessels	155	140	125	110

The above rates were in effect during the month of November, 1912.

393

PORT LIBERTY, N. J.

P. & R. Ry. tariff I. C. C. A. 216, taking effect September 3rd, 1904.

	From collieries in Shamokin, Mahanoy, Schuylkill, and Lorberry districts.				From collieries in Lykens Vally districts.			
	Prepared sizes.	Pea coal.	Buck. No. 1.	Buck. No. 2.	Prepared sizes.	Pea coal.	Buck. No. 1.	Buck. No. 2.
To New York, N. Y., within lighterage limits via Pt. Liberty, N. J., discharged	195	180	165	150	210	195	180	165
Allowance for boat frt. and discharging in N. Y. Harbor	35	35	35	35	35	35	35	35
Net rate, including dumping into vessels	160	145	130	115	175	160	145	130

The above rates were in effect during the month of November, 1904 and 1905.

P. & R. Ry. tariff I. C. C. A. 234, taking effect September 4, 1906.

	Prepared sizes.	Pea coal.	Buck. No. 1.	Buck. No. 2.
To New York, N. Y., within lighterage limits via Pt. Liberty, discharged	195	180	165	150
Allowance for boat frt. and discharging in N. Y. Harbor, etc., per tariff	35	35	35	35
Net rate, including dumping into vessels	160	145	130	115

The above rates were in effect during the month of November, 1906, 1907, 1908, 1909, 1910, and 1911.

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394 *P. & R. Ry. tariff I. C. C. A. 416, taking effect February 23, 1912.*

	Prepared sizes.	Pea coal.	Buck. No. 1.	Buck. No. 2 and smaller.
To Port Liberty coal piers	195	180	165	15
Allowance	35	35	35	3
Net rate, including dumping into vessels	160	145	130	11

395 The above rates were in effect during the month of November, 1912.

Answer to question No. 27—statement showing revenue from sea-going tugs and barges, as follows:

PHILADELPHIA & READING RAILWAY COMPANY.

SEA TUGS AND BARGES.

A—Location		$725,795.85
B—Revenue from anthracite coal operations		434,430.25
C—Revenue from other operations		
D—Total revenue		1,160,226.10
E—Operating expenses anthracite coal operations		
F—Operating expenses other operations		1,074,388.93
G—Total operating expenses		
H—Net revenue		85,837.17

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Counsel for Government offered in evidence certain statements from volume showing answers of the Philadelphia and Reading Coal and Iron Company in re investigation before Interstate Commerce Commission, docket 4914, as follows:

Answer to question No. 52—statement showing the operating revenues and operating expenses of the Philadelphia and Reading Coal and Iron Company for the years ending November 30, 1907 to 1912, inclusive, as follows:

The Philadelphia and Reading Coal and Iron Company—Statement of operating revenues and operating expenses for the years ended June 30th named below.

	1907	1908	1909	1910	1911	1912
	Amount.	Amount.	Amount.	Amount.	Amount.	Amount.
RECEIPTS.						
Coal sales (anthracite)	$37,352,804.44	$36,669,481.25	$33,411,276.83	$31,619,651.76	$32,685,270.72	$34,021,026.09
Coal sales (bituminous)	926,104.32	859,011.61	909,809.51	1,080,488.78	1,152,915.31	1,186,203.29
Coal rents	281,622.17	308,755.24	248,673.97	268,291.84	298,721.37	248,717.75
House and land rents	116,141.72	124,523.86	127,363.33	129,653.86	131,061.95	131,072.52
Interest and dividends	38,008.49	15,199.07	71,784.79	100,720.37	95,140.05	116,283.83
Miscellaneous	32,880.49	37,449.58	23,786.03	19,129.50	17,021.11	30,349.37
Total receipts	38,747,561.63	38,014,420.61	34,792,694.46	33,217,936.11	34,390,130.51	35,733,652.85
EXPENSES.						
Mining coal and repairs	18,741,729.48	19,026,334.47	18,091,769.24	17,616,029.67	18,194,578.04	18,382,202.00
Improvements at collieries, etc	1,345,228.73	1,286,010.65	1,172,204.79	1,216,015.10	1,139,040.88	839,742.00
Coal purchased (anthracite)	2,494,462.53	2,497,487.18	2,111,245.93	1,826,169.60	1,906,678.20	1,618,058.98
Coal purchased (bituminous)	841,991.45	804,653.91	838,168.64	1,040,909.25	1,070,565.70	1,100,315.16
Royalty of leased collieries	677,143.64	667,722.48	594,181.66	563,224.04	510,686.74	458,522.89
Transportation of coal by rail	8,819,396.84	9,188,714.99	7,909,920.49	7,250,288.32	7,114,995.43	6,704,904.30
Transportation of coal by water	1,340,071.56	1,463,367.59	1,170,407.82	1,042,277.02	1,140,539.77	995,791.45
Handling coal at depots	543,137.08	482,126.40	441,512.00	410,836.50	483,037.41	434,451.75
Taxes on coal lands and improvements	296,952.68	339,087.63	353,700.00	344,534.76	456,018.50	589,728.97
Improvements and repairs of houses	53,039.65	49,849.13	58,116.77	84,085.49	78,349.19	32,862.10
Damages account coal dirt	15,767.73	2,054.02	7,896.52	14,577.65	4,971.48	6,309.10
All other expenses	1,007,578.34	984,331.46	947,816.99	1,024,593.89	1,082,850.77	1,086,331.42
Coal sold from stock	444,495.72				790,297.45	2,363,317.79
Coal added to stock		1,200,926.54	478,867.30	422,748.09		
Total expenses	36,620,995.43	35,590,813.37	33,218,073.55	32,010,793.20	33,972,609.56	34,612,537.91
Profit in operating	2,126,566.20	2,423,607.24	1,574,620.91	1,207,142.91	417,520.95	1,121,114.94

400 **Answer to question No. 53—General balance sheets for years 1907 to 1912, inclusive, as follows:**

The Philadelphia and Reading Coal and Iron Company general balance sheet June 30, 1907.

Dr.	Amount.	Total.		Amount.	Total.
CAPITAL ACCOUNTS.			401 CAPITAL ACCOUNTS.		
Coal lands	$56,800,810.49		P. & R. collateral sinking fund loan, 1892–1932		$1,260,000.00
Timberlands	833,717.32		Capital stock		8,000,000.00
New York and eastern depots	731,539.77		Reading company		79,195,702.68
Western yards and depots	812,666.34				
Miners' and other houses	553,137.67				
Pottsville shops, real estate, and improvements	374,791.47				
Storage yards and washeries	851,892.15				
Other real estate	355,897.90				
Improvements and equipments at collieries	13,092,635.26				
Stocks and bonds of companies controlled	9,596,359.05	$84,003,447.42			
CURRENT ASSETS.			CURRENT LIABILITIES.		
Cash on hand	469,660.86		Pay rolls and vouchers	$1,143,609.03	
Coal accounts	3,845,347.21		Due for coal purchased	233,537.14	
Rent accounts	35,029.24		Due for royalty on coal mined	140,587.63	
Companies and individuals	454,409.92		Freight and tolls due foreign roads	166,563.13	
Coal on hand	1,870,170.14		Companies and individuals	120,332.65	
Supplies and materials on hand	1,202,166.78	7,876,784.15	Interest due and uncollected	8,632.50	
			Interest and taxes accrued	168,851.34	1,982,113.42
Depletion of coal-lands fund:			Reading company account interest		400,000.00
Cash	426.18		P. & R. Railway Company current account		1,415,104.92
Securities	1,487,093.61	1,487,519.79	Profit and loss to June 30, 1906	1,259,920.54	
		73,608.13	Loss for year ended June 30, 1907	71,482.02	
Stocks, bonds, and mortgages					1,188,438.52
		93,441,359.49			93,441,359.49

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The Philadelphia and Reading Coal and Iron Company general balance sheet June 30, 1908.

Cr.

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403 *The Philadelphia and Reading Coal and Iron Company general balance sheet June 30, 1908.*

Dr.	Amount.	Total.	Cr.	Amount.	Total.
CAPITAL ACCOUNTS.			403 CAPITAL ACCOUNTS.		
Coal lands	$52,333,242.40		P. & R. collateral sinking fund loan, 1882-1932		$1,230,000.00
Timberlands	836,531.98		Capital stock		8,000,000.00
New York and eastern depots	724,507.46		Reading company		75,241,269.83
Western yards and depots	954,665.90				
Miners' and other houses	553,137.67				
Pottsville shops, real estate, and improvements	374,791.47				
Storage yards and washeries	851,892.15				
Other real estate	361,814.48				
Improvements and equipments at collieries	13,092,635.26				
Stocks and bonds of companies controlled	9,554,914.75				
		$79,638,133.52			
CURRENT ASSETS.			CURRENT LIABILITIES.		
Cash on hand	451,362.84		Pay rolls and vouchers	$1,168,960.03	
Bills receivable	5,253.85		Due for coal purchased	168,950.53	
Coal accounts	3,009,662.94		Due for royalty on coal mined	140,160.55	
Rent accounts	27,172.45		Freight and tolls due foreign roads	25,420.65	
Companies and individuals	465,481.70		Companies and individuals	148,159.22	
Coal on hand	3,000,353.97		Interest due and uncollected	8,712.50	
Supplies and materials on hand	1,117,243.87		Interest and taxes accrued	239,221.29	
		8,076,531.62			1,899,584.77
Depletion of coal-lands fund:			P. & R. Railway Company current account		1,525,102.16
Cash	419,839.12		Profit and loss to June 30, 1907	1,188,438.52	
Securities	1,083,093.61		Profit for year ended June 30, 1908	207,523.77	
		1,502,932.73			1,395,962.29
Stocks, bonds, and mortgages		74,321.18			
		89,291,919.05			89,291,919.05

The Philadelphia and Reading Coal and Iron Company, general balance sheet, June 30, 1909.

Dr.	Amount.	Total.	Cr.	Amount.	Total.
CAPITAL ACCOUNTS.			CAPITAL ACCOUNTS.		
			P. & R. collateral sinking-fund loan, 1892-1932		$1,200,000.00
			Capital stock		8,000,000.00
			Reading Company		74,800,254.83
Coal lands	$51,410,788.67				
Timber lands	838,827.59				
New York and eastern depots	724,507.46				
Western yards and depots	1,046,446.45				
Miners' and other houses	553,137.67				
Pottsville shops, real estate, and improvements	376,169.47				
Storage yards and washeries	851,892.15				
Other real estate	364,339.25				
Improvements and equipment at collieries	12,939,224.33				
Stocks and bonds of companies controlled	9,554,914.75				
		$78,680,247.79	CURRENT LIABILITIES.		
CURRENT ASSETS.					
			Pay rolls and vouchers	$985,771.33	
Cash on hand	358,768.79		Due for coal purchased	133,609.51	
Bills receivable	1,500.00		Due for royalty on coal mined	136,071.64	
Coal accounts	3,283,662.97		Freight and tolls due foreign roads	27,772.45	
Rent accounts	23,933.90		Companies and individuals	229,213.89	
Companies and individuals	481,365.07		Interest due and uncollected	8,592.50	
Coal on hand	3,525,699.86		Interest and taxes accrued	257,480.37	
Supplies and materials on hand	1,324,011.33				1,788,461.69
		8,998,941.92			901,590.85
405 Depletion of coal-lands fund:			P. & R. Railway Company current account	1,395,962.29	
Cash	101,302.48		Profit and loss to June 30, 1908	66,973.71	
Securities	300,000.00		Profit for year ended June 30, 1909		1,462,936.00
		401,302.48			
Stocks, bonds, and mortgages		72,751.18			
		88,153,243.37			88,153,243.37

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Philadelphia and Reading Coal and Iron Company, general balance sheet, June 30, 1910.

Dr.	Amount.	Total.	Cr.	Amount.	Total.
CAPITAL ACCOUNTS.			CAPITAL ACCOUNTS.		
Coal lands	$50,385,195.81		P. & R. collateral sinking-fund loan, 1892-1932		$1,170,000.00
Timber lands	841,567.69		Capital stock		8,000,000.00
New York and eastern depots	790,097.35		Reading Company		75,395,786.83
Western yards and depots	1,351,570.83				
Miners' and other houses	553,137.67				
Pottsville shops, real estate, and improvements	376,169.47				
Storage yards and washeries	851,892.15				
Other real estate	386,339.25				
Improvements and equipments at collieries	12,959,224.33				
Stocks and bonds of companies controlled	9,563,914.78				
		$78,659,109.30			
CURRENT ASSETS.			CURRENT LIABILITIES.		
Cash on hand	678,200.47		Pay rolls and vouchers	$980,244.27	
Bills receivable	153.84		Due for coal purchased	137,699.65	
Coal accounts	3,109,474.69		Due for royalty on coal mined	134,974.14	
Rent accounts	35,228.49		Freight and tolls due foreign roads	31,183.09	
Companies and individuals	754,917.19		Companies and individuals	156,376.21	
Coal on hand	3,817,481.78		Matured interest unpaid	8,592.50	
Supplies and materials on hand	1,406,986.27		Interest and taxes accrued	243,082.43	
		9,782,442.73			1,692,152.29
407 Depletion of coal-lands fund:			P. & R. Railway Company current account		564,933.11
Cash	4.07		Profit in operating for year ended June 30, 1910	1,307,142.91	
Securities	300,000.00		Less fixed charges and taxes	$88,818.49	
		300,004.07	Depletion of lands fund	445,867.50	
Stocks, bonds and mortgages		72,751.18	Interest on Reading Co. loan	743,957.87	
				1,278,643.86	
		88,214,307.28	Loss for year ended June 30, 1910	71,500.95	
			Profit and loss to June 30, 1909	1,462,936.00	
					1,391,435.05
					88,214,307.28

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The Philadelphia and Reading Coal and Iron Company general balance sheet, June 30, 1911.

Dr. | Cr.

	Amount.	Total.		Amount.	Total.
CAPITAL ACCOUNTS.			409 **CAPITAL ACCOUNTS.**		
Coal lands	$49,913,026.51		P. & R. collateral sinking fund loan, 1892-1932		$1,140,000.00
Timber lands	841,660.64		Capital stock		8,000,000.00
New York and eastern depots	839,539.70		Reading Company		74,423,817.42
Western yards and depots	1,651,644.23				
Miners' and other houses	553,137.67				
Pottsville shops, real estate, and improvements	391,462.65				
Storage yards and washeries	851,892.15				
Other real estate	388,425.58				
Improvements and equipments at collieries	12,959,224.33				
Stocks and bonds of and loans to companies controlled	9,863,914.75				
		$78,253,958.21			
CURRENT ASSETS.			**CURRENT LIABILITIES.**		
Cash on hand	456,948.91		Pay rolls and vouchers	$1,147,656.33	
Coal accounts	3,480,267.74		Due for coal purchased	232,387.29	
Rent accounts	29,647.25		Due for royalty on coal mined	158,166.47	
Companies and individuals	854,523.82		Freight and tolls due foreign roads	46,617.68	
Coal on hand	3,333,268.15		Companies and individuals	133,863.05	
Supplies and materials on hand	1,517,489.23		Matured interest unpaid	7,822.50	
		9,672,145.10	Interest and taxes accrued	146,368.11	
					1,872,881.43
Stocks, bonds, and mortgages		73,151.24	P. & R. Railway Company current account		1,274,437.21
			Surplus June 30, 1910	1,391,435.05	
			Profit in operating for year ended June 30, 1911	$417,520.95	
			Less:		
			Fixed charges and taxes	$86,598.24	
			Interest on Reading Company loans	375,572.60	
			Interest on Tremont Coal Co. bonds matured—amount advanced	58,666.67	
				520,837.51	
			Loss for year ended June 30, 1911	103,316.56	
					1,288,118.49
		87,999,254.55			87,999,254.55

Dr.

	Amount.	Total.
CAPITAL ACCOUNTS.		
Coal lands	$49,397,659.97	
Timber lands	841,690.64	
New York and eastern depots	839,539.70	
Western yards and depots	1,736,979.45	
Miner's and other houses	553,137.67	
Pottsville shops, real estate, and improvements	391,462.65	
Storage yards and washeries	851,892.15	
Other real estate	388,425.58	
Improvements and equipments at collieries	12,959,224.33	
Stocks and bonds of and loans to companies controlled	9,863,914.75	
		$77,823,926.89
CURRENT ASSETS.		
Cash on hand	2,692,617.67	
Bills receivable	2,832.42	
Coal accounts	3,221,693.53	
Rent accounts	24,164.19	
Companies and individuals	796,145.72	
Coal on hand	776,701.52	
Supplies and materials on hand	1,236,240.17	
		8,750,395.22
Stocks, bonds, and mortgages		73,201.24
		86,647,523.35

Cr.

	Amount.	Total.
CAPITAL ACCOUNTS.		
P. & R. collateral sinking-fund loan, 1892-1932		$1,110,000.00
Capital stock		8,000,000.00
Reading company		73,466,529.72
CURRENT LIABILITIES.		
Pay rolls and vouchers	$1,033,421.33	
Due for coal purchased	182,953.31	
Due for royalty on coal mined	142,136.24	
Freight and tolls due foreign roads	40,836.55	
Companies and individuals	266,042.48	
Interest due and uncollected	20.00	
Interest and taxes accrued	260,149.66	
		1,925,559.52
Miners' beneficial fund		37,869.72
P. & R. Railway Company current account		647,870.25
Profit and loss to June 30, 1911	1,288,118.49	
Profit and loss July 1, 1911, to June 30, 1912	171,575.65	
		1,459,694.14
		86,647,523.35

412 Answer to question No. 51—Statement showing stock of coal companies owned by the Philadelphia and Reading Coal and Iron Company on June 30, 1912, as follows:

PHILADELPHIA AND READING COAL AND IRON COMPANY.

FORM L.

Statement of securities owned on June 30, 1912.

Name of issuing company.	Name of security.	Par value owned.			Income during year.	Date acquired.	Original cost to owner.	Book value on June 30, 1912.	Explanation of difference, if any, between column (h) and column (i).
		Pledged.	Held in sinking or other reserve funds.	In treasury.					
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
Preston Coal & Improvement Co	Stock	$2,832,350.00		$9,650.00		Jan., 1872	$2,834,232.00	$2,834,232.00	These stocks were transferred from Reading company under date of reorganization, December 1, 1896.
Tremont Coal Company	do	2,957,850.00		1,000.00		do	2,958,850.00	2,958,850.00	
Mammoth Vein Coal & Iron Co	do	603,860.00		2,040.00		do	604,433.00	604,433.00	
Fulton Coal Company	do	98,435.85		6,148.85	$40,484.40	do	104,584.70	104,584.70	
Locust Gap Improvement Co	do	417,311.40		1,033.50	42,097.60	do	418,151.15	418,151.15	
Deleware Coal Co	do	259,150.00		4,000.00		June, 1874	262,850.00	262,850.00	

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Answer to question No. 54—Statement showing for the month of November, 1912, the location and output of all collieries owned and operated by the Philadelphia and Reading Coal and Iron Company, as follows: 414

THE PHILADELPHIA AND READING COAL AND IRON COMPANY.

Statement giving the following information for the month of November, 1912, concerning all collieries and washeries owned and operated.

Name.	Location.	Output.
Collieries.		*Gross tons.*
Alaska	Northumberland County, Penna	29,545.00
Bast	Schuylkill County, Penna	23,239.12
Bear Ridge	do	Idle.
Bear Valley	Northumberland County, Penna	27,899.04
Boston Run	Schuylkill County, Penna	15,995.08
Brookside	do	26,228.09
Burnside	Northumberland County, Penna	35,699.10
Draper	Schuylkill County, Penna	14,856.12
Eagle Hill	do	21,099.14
Ellangowan	do	46,385.19
Gilberton	do	13,641.19
Good Spring	do	28,366.12
Hammond	do	36,468.16
Henry Clay	Northumberland County, Penna	31,475.16
John Veith	Schuylkill County, Penna	3,910.02 415
Lincoln	do	38,520.14
Locust Gap	Northumberland County, Penna	44,797.03
Mahanoy City	Schuylkill County, Penna	24,105.15
Maple Hill	do	69,533.07
North Franklin	Northumberland County, Penna	27,036.02
North Mahanoy	Schuylkill County, Penna	34,273.10
Otto	do	25,992.14
Phoenix Park	do	16,755.19
Pine Knot	do	45,210.02
Potts	Columbia County, Penna	30,952.09
Reliance	Northumberland County, Penna	20,709.18
St. Nicholas	Schuylkill County, Penna	16,271.09
Shenandoah City	do	40,045.03
Silver Creek	do	42,839.05
Suffolk	do	31,121.14
Tunnel Ridge	do	12,702.18
Valley View	do	21.10
Wadesville	do	24,858.07
West Shenandoah	do	52,421.14
Washeries.		
Anchor	Schuylkill County, Penna	Idle.
Locust Spring	Northumberland County, Penna	Idle.
Middle Creek	Schuylkill County, Penna	12.10
Plank Ridge	do	Idle.
Rausch Creek	do	Idle.
Total		952,994.16

Mr. COUDERT. Does the statement in the answer of the Philadelphia and Reading Coal and Iron Company on page 5, that it admits that no interest was paid by this defendant on these advances, refer to the total of advances, being the sum of $69,179,336.16? 416

Mr. HEEBNER. I so believed, and stated it in the answer for this reason.

Counsel for Government offered in evidence certain statements from volume showing **answers of the Central Railroad Company of New Jersey in re Investigation before Interstate Commerce Commission, docket No. 4914,** as follows:

Answer to question No. 36a—statement showing the shipments of the Central Railroad Company of New Jersey to Port Johnston Piers.

New Jersey, and Elizabethport Piers, New Jersey, for the month of November, 1912, as follows:

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY.

	Region.	To—	Number of cars.	Gross tonnage.
417	Wyoming	Port Johnston Piers	a 3,338	128,137.17
	Lehigh	do	78	3,268.11
	Schuylkill	do		
	Total		3,416	131,405.11
	Wyoming	Elizabethport Piers	261	10,162.01
	Lehigh	do	2,412	96,436.11
	Schuylkill	do	27	1,067.01
	Total		2,700	107,665.17

a Includes 119 cars from L. V. R. R. at Franklin Junc.

Answer to question No. 27—statement showing revenue from the operation of seagoing tugs and barges from Port Johnston, New Jersey, to New England points, as follows:

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY.

(A)	Location of operation	Port Johnston, N. J., to New England ports	
(B)	Revenue from anthracite coal operations		$159,670.71
(C)	Revenue from other operations		
(D)	Total revenue		159,670.71
(E)	Operating expenses, anthracite coal operations		178,686.06
(F)	Operating expenses, other operations		
(G)	Total operating expenses		178,686.06
(H)	Net revenue or net loss		19,015.35

Answer to question No. 26—statement showing operation of har-
418 bor terminal transfers, location, revenue, operating expenses, etc., for the year ending June 30, 1912, as follows:

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY.

Location of operation	New York Harbor.
Revenue from anthracite coal operations	$90,117.65
Revenue from other operations	647,416.16
Total revenue	737,533.81
Operating expenses, anthracite coal operations	
Operating expenses, other operations	
Total operating expenses	a 872,904.43
Net revenue or *net loss*	135,370.62

a Impossible to separate the expenses between anthracite and other expenses.

Answer to question No. 39—statement showing for November, 1912, each colliery served by the Central Railroad Company of New Jersey, with the output and rated capacity, as follows: 419

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY. 420

The name of colliery or washery.	The name of the person or company which shipped all or the greater part of the coal produced.	The distance in miles from concentrating point of each colliery or washery.	The output.	Rated.
Wyoming region:				
Hollenback	Lehigh & Wilkes-Barre Coal Company.	7.7	25,959.16	27,959.16 R S
S. Wilkes-Barre	do	6.2	25,911.04	39,411.04 R S T
Stanton	do	5.8	54,495.04	59,687.04 R S
Sugar Notch	do	5.8	30,437.11	33,105.11 R S
Empire Washery.	do	6.2	10,839.03	13,419.03 R S U
Lance	do	8.5	34,606.15	37,489.15 R S
Nottingham	do	9.9	59,086.19	64,010.19 R S
Plymouth	do	9.0	19,788.13	21,436.13 R S
Maxwell	do	5.0	49,830.13	53,982.13 R S
Wanamie	do	11.6	41,043.00	44,283.00 R S
Buttonwood	do	7.4	27,146.01	29,408.01 R S
Lee or Melville	do	19.2	8,343.18	9,039.18 R S
Do	West End Coal Co	19.2	17,022.09	18,440.09 R S W
Red Ash	Lehigh & Wilkes-Barre Coal Company.	7.0	16,076.19	17,414.19 R S
Do	Red Ash Coal Company	7.0	1,275.04	2,255.04 R S
Hadleigh	Pittston Coal Mining Co	6.7	38.06	2,640.00 V
Alden	Whitney and Kemmerer	11.6	23,349.12	25,293.12 R S
Ridgewood	do	13.5	1,020.11	1,114.11 R S W
Lehigh region:				
Upper Lehigh	Upper Lehigh Coal Company	32.6	17,176.15	18,606.15 R S
Sandy Run	Whitney and Kemmerer	31.0	9,420.09	10,204.09 R S
Honey Brook	Lehigh & Wilkes-Barre Coal Company.	30.9	63,049.01	68,303.01 R S
Beaver Brook	Weston, Dodson & Co. (Inc.)	31.9	17,847.01	19,333.01 R S W
Coleraine	Estate of A. S. VanWickle	31.5	3,453.13	3,741.13 R S W
Hauto [a]	Lehigh Coal & Navigation Company.	8.9	163,997.09	170,557.09 S W
Nesquehoning	do	5.4	72,079.02	74,962.02 S
Schuylkill region:				
Mary D	Mary D Coal Co	21.2	12,853.17	13,367.17 S W

R Idle November 1st, account "All Saints Day."
S Idle November 28th, account "Thanksgiving Day."
T Idle November 2nd to 9th, both inclusive, account "Strike."
U Idle November 2nd to 5th, both inclusive, no orders for small-sizes.
V Idle all of November, account building a new breaker.
W Ship part of their output over other roads.
[a] The following collieries and washeries of the Lehigh Coal and Navigation Company deliver their output with their own power at Hauto, to wit: Collieries Nos. 5, 6, 8, 9, 10, 11, and 14. Washeries Nos. 12, 15, and Hauto.

421 Answer to question No. 30—statement showing tonnage and revenue from anthracite coal and from other freight, as follows:

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY.

ANTHRACITE COAL.

Year.	Tons.	Ton-miles.	Revenue.
1880 a			
1890 b	7,463,529	654,865,379	6,725,695.96
1900 b	6,252,628	675,926,106	5,959,623.14
1905 c	8,007,406	980,136,321	7,931,739.33
1910 c	9,255,913	1,028,474,558	8,089,545.53
1912 c	9,574,532	1,014,926,361	8,188,584.45

OTHER FREIGHT.

1880 a			
1890 b	6,401,801	342,040,924	3,955,710.46
1900 b	10,004,193	598,128,461	5,913,859.23
1905 c	14,836,023	883,557,866	7,670,406.92
1910 c	20,265,477	1,124,985,053	10,334,443.84
1912 c	21,613,842	1,195,373,396	10,850,838.86

ALL FREIGHT.

1880 a			
1890 b	13,865,330	996,906,303	10,681,406.42
1900 b	16,256,821	1,274,054,567	11,873,482.39
1905 c	22,843,429	1,863,694,187	15,602,146.25
1910 c	29,521,390	2,153,459,611	18,423,989.30
1912 c	31,188,374	2,210,299,757	19,039,423.34

422 a Impossible to furnish the information called for.
b For years ended December 31.
c For years ended June 30.

Answer to question No. 34—statement showing shipments of coal for the month of November, 1912, segregated by shippers and sizes, as follows:

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY.

	The Lehigh and Wilkes-Barre Coal Company.	The Lehigh Coal and Navigation Company.	All other shippers.		Total.
	A.	B.	K.a	K.b	
COMMERCIAL COAL.					
Prepared	295,395.17	94,602.09	52,261.18	48,089.12	490,349.16
Pea	41,948.07	32,451.12	8,332.08	1,205.04	83,937.11
Smaller than pea	63,509.00	109,022.10	42,863.11	30,867.00	246,262.01
	400,853.04	236,076.11	103,457.17	80,161.16	820,549.08
SUPPLY COAL.					
Prepared	22,996.09				22,996.09
Pea	7,609.05				7,609.05
Smaller than pea	35,175.19				35,175.19
	65,781.13				65,781.13

a All other shippers on line of respondent.
b Received from connecting carriers, but can not say whether tonnage was shipped by companies named in "C" to "J," inclusive.

Answer to question No. 37B—statement of allowances in certain 423
places and to certain shippers, as follows:

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY.

There has been no adjustment of freight charges to the 60 per cent or the 65 per cent contracts referred to in the question. This respondent had no such contracts in effect during the period named, nor any part of it.

This company's records will not enable it to answer this portion of question No. 37 for the period prior to 1902.

Between the years 1902 and 1910, inclusive, respondent allowed the Lehigh Coal and Navigation Company $0.10.8 on prepared sizes and $0.09 on pea size and smaller, as a shipping allowance at the respondent's Elizabethport docks, where, during that period, the Lehigh Coal and Navigation Company performed the service of unloading its own coal from cars to ships' bottoms, a service covered by the rate. At the beginning of 1911 respondent assumed the performance of this work of unloading coal from cars into ships' bottoms, and the payment to the Lehigh Coal and Navigation Company for all shipping charges then ceased.

During 1904, 1905, and 1906 (up to and inclusive of August 31st of the last-named year) the following allowances were made to the Lehigh Coal and Navigation Company, to wit: In the year 1904 an allowance of $0.06.6 on coal originating at Hauto, Pennsylvania, and $0.08.6 on coal originating at Nesquehoning, Pennsylvania, was 424
allowed to the Lehigh Coal and Navigation Company on buck and culm when forwarded from Elizabethport by boat to Brooklyn Heights Railroad Company, Peter Cooper Glue Company, F. E. Howard, Brooklyn Union Gas Company, E. W. Bliss Company, Ginna and Company, Clark Estate, Standard Gas Company, and Thomas F. Quinland.

In 1905 these allowances were restricted to No. 1 buck and the following names were added to the list given above as consignees, to wit: Peoples' Line, Gardner Pattison, and New York and South Brooklyn Ferry Company. On Ap 1st, 1905, the Brooklyn Heights Railroad Company was taken out of this list and given a special allowance for loading and picking up, which amounted to $0.20.3 on No. 1 buck and $0.11.7 on No. 2 buck coming from Hauto and Nesquehoning.

In 1906 the name of the Metropolitan Street Railway Company was added to the above list, to whom allowances of $0.06.6 and $0.08.6 were made. Otherwise the same allowances were continued down to and including August 31st, 1906, when all these allowances were discontinued.

Under an agreement between the receivers of this respondent and the North River Coal and Wharf Company, made March 18th, 1887, the latter erected a pier on respondent's lands at Jersey City, which pier came to be known locally as Port Liberty. This agreement was superseded on September 1st, 1905, by an agreement between respon- 425
dent company and the North River Coal and Wharf Company, which agreement is filed with the commission in response to question No. 16, ante. (See also the answer to question No. 31, ante.) Under that agreement the North River Coal and Wharf Company has acted as respondent's servant and agent in the delivery of coal at Port Liberty

dock under respondent's tariffs. The North River Coal and Wharf Company owns and operates engines and unloads the coal, and since 1902 the respondent has paid that company $0.15 per ton for this service. As will be noted by reference to the agreement, the lessee pays a rental of $6,000.00 per annum for the use of respondent's land upon which the North River Coal and Wharf Company's pier stands. Respondent does not deem this allowance to be an allowance out of the rate, because respondent's tariff rates entitle a shipper to have his coal put in vessel bottom by respondent at the respondent's sole cost. The Port Liberty pier thus leased is opened to all shippers and receivers of coal in New York Harbor on terms of equality, but to the extent that the North River Coal and Wharf Company may itself be a receiver of coal, while that company would pay the full tariff rate and perform the service of loading its own coal into a vessel, it would receive as compensation for so doing the sum of $0.15 per ton.

426 A somewhat similar arrangement to the foregoing has obtained at what is known as the Communipaw Pier, located at respondent's Jersey City terminal. From 1902 to July 1st, 1910, the Communipaw Coal Company was the lessee of this Communipaw Pier. From July 1st, 1910, to date Burns Brothers have been the lessees of this pier, having succeeded to the interests of the Communipaw Coal Company. Reference is made to the last-named agreement, which is filed in response to question No. 16, ante, and also to the response to question No. 31, ante. At this pier respondent performs the engine service instead of the consignees doing so, as was the case at the Port Liberty Pier operated by the North River Coal and Wharf Company. From 1902 to date respondent has collected the full tariff rates from the consignees at the Communipaw Pier, but has paid to the consignees (The Communipaw Coal Company down to July 1st, 1910, and Burns Brothers since that date) $0.15 per ton on prepared sizes of anthracite coal and $0.12 per ton on the steam sizes in consideration of the consignees relieving the respondent of its service in delivering from cars to bottoms as covered by respondent's tariffs. Burns Brothers, like the North River Coal & Wharf Company, pay a rental for this pier, as will be noted from a scrutiny of the contract referred to above.

427 Counsel for Government offered in evidence answer by the Lehigh and Wilkes-Barre Coal Company to question 54 in re investigation before Interstate Commerce Commission, Docket 4914—statement showing the output and location of all collieries owned and operated by the Lehigh and Wilkes-Barre Coal Company, as follows:

Answer to question No. 54. Collieries and washeries operated November, 1912, by Lehigh & Wilkes-Barre Coal Co. 428

Name and location.	Output, gross tons.	Average cost producing coal.
(A)	(B)	(C) (D)
Hollenback Colliery No. 2, Wilkes-Barre, Pa.	31,609.00	$1.972
8, Wilkes-Barre Colliery No. 5, Wilkes-Barre, Pa.	34,244.00	2.04
Stanton Colliery No. 7, Wilkes-Barre, Pa.	56,325.19	1.727
Sugar Notch Colliery No. 9, Sugar Notch, Pa.	31,001.14	1.735
Lance Colliery No. 11, Plymouth, Pa.	34,968.08	1.614
Nottingham Colliery No. 15, Plymouth, Pa.	59,863.03	1.491
Wanamie Colliery No. 18, Wanamie, Pa.	41,466.12	1.566
Maxwell Colliery No. 20, Ashley, Pa.	51,095.10	1.453
Audenried Colliery No. 4, Audenried, Pa.	36,642.14	1.873
Honey Brook Colliery No. 5, Audenried, Pa.	27,128.03	1.602
Empire Washery, Wilkes-Barre Township, Pa.	10,956.03	0.267

To correctly show cost of conducting the business there must be added approximately an average of 18c. per ton to meet taxes, .122c. per ton sinking-fund charges, and 18c. per ton interest on debt. The figures do not include any items to cover such general expenses as accounting department, sales department, legal expenses, insurance, or similar overhead charges, which amount to .036c. per ton.

(Adjourned until Monday, February 16, 1914, at 11 o'clock a. m.) 429

Met pursuant to adjournment at 2 Rector Street, New York City, Monday, February 16, 1914, at eleven o'clock a. m. 430

Present: The examiner; Messrs. Coudert, Kingsbury, and Gordon, special assistants to the Attorney General, for the Government; Messrs. Heebner, Reynolds, Drinker, Beattie, DeForest, and Turner, for defendants.

RICHARD T. DAVIES, having been duly sworn, was examined as follows:

By Mr. COUDERT:

Q. Will you give your full name and your position?—A. Richard T. Davies, general coal agent of the Lehigh Coal & Navigation Company.

Q. How long have you been associated with the company, and in what position?—A. The first of January, 1878, as sort of clerk and bookkeeper in New York; a year after made agent in New York; I remained in that position until about the first of November, 1905, when I was called to Philadelphia on account of the serious illness of my predecessor, who soon after died, and I succeeded to his position about December 1st, 1905, and have been there ever since.

Q. You thus have a very general knowledge of the affairs of the Lehigh Coal & Navigation Company?—A. More general since the first of December, 1905; prior to that only the New York end of the business.

Q. Will you describe to us in your own way, and for the purposes of record, with reference to the map here, the various routes over which the coal from your mines proceeds?—A. Our coal originates in Hauto and about Hauto, in that region.

Q. All about Hauto?—A. Yes.

Q. Your acreage is, generally speaking, what?—A. I do not recall that. We move by the Reading Lines, over to Tamaqua, and we follow out through all this region here [indicating].

Q. You go down over the Reading lines south to Port Clinton, Reading, etc.?—A. All the way to Philadelphia; all these local points in here [indicating].

Q. Roughly speaking, what proportion of your coal goes from Hauto over the Panther Creek Railroad and south through Port Clinton to Philadelphia?—A. I should have to formulate a statement for that, which I could do.

432 Q. You will give me the proportions?—A. I will be very glad to give you all the proportions of all these routes.

Q. It is a considerable proportion that goes that way?—A. There is quite a tonnage that goes that way.

Q. That is one of the principal routes which your coal takes?—A. Yes.

Q. It goes to Philadelphia, and from there do you know where it goes?—A. It is distributed either in the harbor by water, or delivered on the sidings of the various dealers, local dealers.

Q. Where is it consigned to? Local dealers at Philadelphia?—A. Some of it, yes; that proportion which goes to Philadelphia is consigned to the local dealers.

Q. To the local dealers there?—A. Yes, excepting a portion which is consigned to Port Richmond docks for reloading into boats and distribution on the water.

Q. Will you also give me a statement, if you can, of how large a proportion of the coal shipped to Philadelphia is transshipped and goes over the water routes you have referred to?—A. Yes, I can do that very readily.

Q. What other routes does your coal take?—A. Starting at Hauto, down to Mauch Chunk.

Q. On what line does it go from Hauto to Mauch Chunk?—A. The Central Railroad Lines.

Q. Is that the Panther Creek Line?—A. No, sir; the Panther Creek Line runs in this direction [indicating].

433 Q. So the portion of the coal shipments to which you are now addressing yourself originates at Hauto?

A. At Hauto.

Q. Go over the lines of the Central Railroad of New Jersey to Mauch Chunk and from there what is their ultimate destination?

A. Local points on the Central Railroad of New Jersey to Phillipsburg and beyond all the way to tide.

Q. Tide at New York?

A. At New York. Then at Phillipsburg we take the Pennsylvania lines.

Q. Therefore you say that a great proportion of your shipment, the exact amount of which you will give me in a memorandum later, originating at Hauto goes through Mauch Chunk, through Easton, Phillipsburg, through Bound Brook, and to New York tidewater wholly over the lines of the Central Railroad of New Jersey?

A. Yes, sir.

Q. Now, in addition to that second class of shipment going to New York tidewater, what is the next important class of shipments and its ultimate destination?

A. Of the all-rail coal, it is coal leaving the lines of the Central Railroad of New Jersey at Phillipsburg and following the Pennsylvania Railroad to Philadelphia.

Q. Following the Pennsylvania Railroad to Philadelphia?

A. Philadelphia and intervening points.

434 Q. So that a portion of your coal goes to Philadelphia via the Reading Railway alone and a portion of your coal goes to Philadelphia via the Central Railroad, connecting at Easton with the Pennsylvania Railroad?

A. At Phillipsburg; yes.

Q. With the Pennsylvania Railroad?

A. Yes.

Q. That covers all the coal that goes to Philadelphia from your mines?

A. That covers all, excepting another class of tonnage.

Q. Explain that.

A. That goes from Hauto to Coalport, where our canal shipping docks are, and follows the line of the canal locally all the way down.

Q. Will you kindly trace that line of canal, naming the principal points the canal goes through?

A. It follows the Lehigh River to Easton and from there it follows, substantially follows, the Delaware River all the way down to Bristol.

Q. And from Bristol?

A. It comes out into the river and comes to Philadelphia.

Q. And you will be good enough to give me a memorandum, showing what proportion of coal from your mines goes by that water route from Hauto to Philadelphia?

A. Yes, sir.

435 Q. In that memorandum will you give me the names of the canals, or can you do that now?

A. The Lehigh Canal is the division running from Coalport to Easton and the Delaware Division Canal from there on to Bristol.

Q. Then you have described the various routes of the coal to Philadelphia and you have described one route, namely, the route via the Central Railroad to New York tidewater. Now, are there any routes over which your coal goes to New York tidewater other than the one described?

A. Yes; a portion of the tonnage leaving Tamaqua——

Q. Via the Panther Creek Railroad?

A. Yes; follows the L. & N. E. lines, the Lehigh & New England Road, to Hainesburg Junction, and is there diverted to the New York, Susquehanna & Western tracks, and reaches Edgewater, which is on the Hudson River near New York.

Q. And you will give me the proportion of the coal that goes in that way to Edgewater?

A. Exactly so.

Q. Is there any other route by which any of your coal reaches New York?

A. There are no other routes over which we have shipped to New York.

Q. You have shipped no coal to New York over the Reading Road?

A. No; at no time that I can remember.

Q. None of your coal goes to Port Reading?

A. No.

436 Q. If you should find any additional fact in regard to that, or find that you were mistaken, you will let me have a memorandum of it?

A. I will do so.

Q. Now, having stated all the routes by which your coal goes to New York and Philadelphia, can you state to what other points of ultimate destination your coal goes?

A. There is the coal for New England.

Q. Describe the routing of the coal to the New England States.

A. It follows from Tamaqua the lines of the Lehigh & New England and its connections all the way over to Campbell Hall and on from there by the Central of New England into all parts of the New England States.

Q. Have you any other route by which coal travels to New England than the route over the Lehigh & New England Railroad?

A. Yes; there is a connection at Easton with the Central Railroad Lines, whereby coal can reach the New England States.

Q. Where does it leave the Central Lines, that coal?

A. At Easton.

Q. What lines does it then take for New England? When your coal leaves Easton on its way to its ultimate destination for New

England, what lines other than the Lehigh & New England does it take?

A. The Lehigh & Hudson River Railway.

Q. And it goes over the Lehigh & Hudson to Maybrook?

A. Yes.

Q. And then connects with what? The Central of New England? 437

A. The Central of New England, and goes on as before.

Q. So that you have consigned coal to New England both over the Lehigh & New England Railroad and the Lehigh & Hudson River Railway?

A. Yes.

Q. In proportions the amount of which you will furnish to us in a memorandum?

A. Yes, sir.

Q. I will ask you whether there is a junction point at Bethlehem?

A. Yes.

Q. Where does the coal go from that junction?

A. A portion of the coal leaves the lines of the Central Railroad of New Jersey at Bethlehem and connects with the Lehigh & New England and proceeds to its ultimate destination in New England.

Q. The proportions to be furnished later. In addition to this coal that goes to New York tidewater, Philadelphia tidewater and points in New England, does any of your coal go to other points, in the West, for instance, and by other routes?

A. Yes.

Q. Now, if you will kindly explain those routes.

A. That coal starts at Hauto.

Q. All your coal originates at Hauto; is that so?

A. In the mines in the Panther Creek Valley.

Q. Where does your coal originate? At what shipping point? 438

A. In the Panther Creek Valley.

Q. Either at Hauto or Tamaqua?

A. And intervening points.

Q. It originates at intervening points between Hauto and Tamaqua; is that right?

A. Yes.

Q. Does any of your coal, other than the coal as to which you have already testified, go to markets other than the tidewaters of Philadelphia and New York and the points in New England?

A. Yes; via the Lehigh & New England and Lehigh Valley tracks, connection with which is shown here at Lizard Creek Junction, for points in the West.

Q. That goes where?

A. Points in the West.

Q. Over the Lehigh Valley?

A. Yes.

Q. And you will furnish me the proportion of coal that goes in that way?

A. Yes.

Q. Are there any other routes than those you have already traced on the map, over which your coal goes?

A. I do not recall, but in that statement I will give you the entire distribution of the coal.

Q. And you will give me that for some typical year, say 1911?

439 A. That is not a typical year. I have been describing things that would not appear in the 1911 statement. 1913 would be a typical year.

Q. Then will you give me a statement for 1911 and 1913 as well?

A. Yes, sir.

Mr. DRINKER. Mr. Davies is not an operating man and, if it is your pleasure, I would like to go over his testimony and get up his exhibits and then cross-examine him at a later time in reference to it, so as to straighten out any inaccuracies.

Mr. COUDERT. Suit yourself. We might do that at the next hearing, if that will suit you.

By Mr. COUDERT:

Q. Would it be physically possible to route your coal to New England over the Central Railroad of New Jersey or the Philadelphia & Reading Railway?

A. Not over the Reading roads and I think not entirely over the Central now. There used to be a method whereby coal was floated to Port Morris from Communipaw, but that is a thing of the past, I believe.

Q. Could any of your coal go over the Reading or Central Railroads to tidewater and be transported by water to New England?

A. There is a considerable portion goes to tide for such transportation.

440 Q. And a great deal of that coal that so goes to tide is transported to New England in that way?

A. Yes.

Q. Now you have testified that some of your coal goes to New England over the Lehigh and New England Railroad, and that other consignments of your coal go to New England over the Lehigh & Hudson Railway. It is quite possible, is it not, for the coal to go over either of those routes equally?

A. Yes; I should say so.

Q. And in choosing the one or the other, what is the propelling motive, if you know?

A. There are several. One of them is the fact that the Lehigh & New England Road is in position, by their having plenty of coal equipment, to give us cars of a type that are difficult to get from other companies—low-sided cars that the other companies are abandoning. That has helped us very greatly, both because of restrictions as to weights over bridges and the weights on sidings and all that, put upon us by the New Haven Road.

Q. They make a specialty, then, of having a special car, in order to tempt your coal traffic?

A. I will not say that, but they have it. I do not know what they make a specialty of.

Q. That is the main reason for your preferring to route in that way rather than by the Lehigh & Hudson?

A. It helps us greatly in the distribution of our tonnage.

Q. The greater part of your tonnage, the major part, passes over 441
the Central Railroad of New Jersey, does it not?

A. That statement that I give you will show all those details.

Q. Are you familiar with the history of the Panther Creek Road?

A. Not at all.

Mr. Coudert suspended his examination to ask Mr. Drinker, counsel for the Lehigh Coal & Navigation Company, for a brief history of the so-called Panther Creek Railroad.

Mr. Drinker said that he would furnish such a statement; and subsequently stated to the examiner that he would produce it the next hearing.

442

By Mr. COUDERT:

Q. You have given one reason for preferring to send coal on the Lehigh & New England Road, rather than on the Lehigh & Hudson. Are there any other reasons, other than the car facilities of the former road?

A. None that specially occur to me. That is a rather broad question; I would like to think it over and answer it.

Q. On those railroads are the rates the same?

A. Essentially the same, yes.

Q. I understand that the tariffs on both are similar?

A. Yes; you have to have equal tariffs or lose your market.

Q. So that the features of the one or the other which cause you to discriminate are features of convenience, rather than features of rate and finance?

A. Yes.

Q. What induces the sending of coal to tidewater over the Central or the Reading, the one rather than the other?

A. That is on account of some arrangement with which I am not familiar.

Q. You are simply told to ship over one or the other, and you follow those instructions, by reason of some arrangement between the roads as to which you have no familiarity?

A. Yes.

Q. And you get those instructions from the president of your company?

A. Yes.

443 Q. Do you happen to have any information in regard to leases of land of the Lehigh Coal & Navigation Company to tenant operators?

A. No, not at all.

Q. That information is not in your possession?

A. Not within my jurisdiction at all.

Q. What are your functions, exactly, as freight agent?

A. The receiving of our product and finding a market for it, generally distributing it wherever I can; maintaining the sales department, with representatives at different points to solicit business and dispose of our tonnage.

Q. Does the Lehigh Coal & Navigation Company purchase any coal from others?

A. That is an operation that I have nothing to do with.

Q. You have no familiarity with that?

A. No.

Q. On the Lehigh & New England and on the Lehigh & Hudson River Railroads do you have through rates?

A. Yes; the Lehigh & Hudson rates are all in connection with Central Railroad tariffs, tariffs issued by the Central Railroad.

Q. The Lehigh & New England with their own tariffs?

A. With their own tariffs, as well as some of those going via Bethlehem Junction are in conjunction with the Central Railroad.

Q. Do you know whether an allowance is given to the Lehigh Coal & Navigation Company on coal originating at Hauto and Nesque-
444 honing and forwarded to certain named consumers, but not to others?

A. I have no knowledge of those things. I think they are matters of the accounting department that could be better answered there.

Q. You yourself do not know anything about that?

A. No.

Q. You do not know of any particular consumers to whom coal is forwarded and from whom an allowance is received for the forwarding of that coal?

A. No.

Q. Do you know what is meant by the Penn Haven basis of rates, and can you give us a lucid explanation of that?

A. I wish I could.

Q. You are not able to do that?

A. No, sir.

Q. Then you are going to furnish me all the figures that I have requested in the examination, showing exactly what proportions of your coal from your mines go over all the routes testified to by you?

A. Very good.

At Mr. Coudert's request Mr. Drinker made the following statement regarding the Penn Haven basis of rates as affecting the Lehigh Coal & Navigation Company:

Mr. DRINKER. The Lehigh Coal & Navigation Company operated 445
its own railroad from 1867 until 1871. That railroad was built in pursuance of the charter power of the navigation company to build a railroad and to substitute it for its slackwater navigation, the slackwater navigation having been authorized by the legislature for the principal and express purpose of enabling the navigation company to get its coal to market from its mines. The navigation company, as started originally, was made out of two companies; one was a coal company and the other was a navigation company. They were originally joint stock associations, not incorporated. In 1821 the two companies were put together in order to get more capital, and in 1822 they were incorporated into the Lehigh Coal & Navigation Company, and they were authorized to mine the coal and then to transport it down the canal. In 1837 the navigation company was authorized, by amendment to its charter, to construct a railroad from Wilkes-Barre over the mountain, to connect with its slackwater navigation at White Haven. In 1862 there was a very bad flood on the river and it washed out part of the canal, up at the upper part, and in 1863 the company was authorized by an amendment to its charter to construct a railroad from White Haven to Mauch Chunk and to abandon a part of the canal; and in 1864 it was authorized to construct the other half of the railroad, making a continuous line of railroad from Wilkes-
Barre down to Easton or Phillipsburg across the river. In building 446
and operating these railroads the company was given the powers under the general railroad act of 1849. That is how the so-called Lehigh & Susquehanna Railroad happened to be built, to supplement the canal. Then they operated the road from 1867 to 1871, and at that time they were in considerable financial difficulties, and they entered into this lease with the Central Railroad of New Jersey; but, as a moving consideration of the lease, they wanted to make sure that they would get favorable rates. They would not have given up their railroad if they had not been sure of favorable rates over the road that was going to take their coal, because they were giving up the means of getting their coal to market by making this lease. At that time, and prior thereto, the railroad up from Penn Haven Junction to Hazleton, where a great many mines are and much coal, was the Beaver Meadow Railroad, which was subsequently absorbed by the Lehigh Valley. But there was then a distinct rate, which was known as a

lateral, from Hazleton down as far as Penn Haven. That rate varied from 34 or 35 cents up to 42 cents. Penn Haven Junction was then a basing point of making rates on the Lehigh River. The rate from Hazleton down to Penn Haven was a distinct rate. Then there was
447 another distinct rate from Penn Haven to Mauch Chunk, and another one from Mauch Chunk down to the Delaware River, and another distinct rate via the Central Railroad of New Jersey from there to tidewater. The Central Railroad, or the Lehigh Navigation Railroad, did not run up as far as Hazleton. That tenth clause of the lease is worded so that one viewing it from the conditions as they now exist could not perhaps understand what it means, but in view of the circumstances existing at the time it is clearer. What it says is:

The parties of the second part further covenant and agree that on coal delivered for transportation by the parties of the first part on sidings at the northern end of the Nesquehoning tunnel, the rates of transportation shall not exceed the rates charged at the same time from Penn Haven to the same points on coal from the Lehigh region, either by the parties of the second part or by the Lehigh Valley Railroad Company.

From Penn Haven to Mauch Chunk is eight miles, the same distance as from Hauto.

Now, bearing in mind the fact that the rate from Hazleton to Penn Haven Junction was a distinct rate, known as a lateral, it was the intention of the tenth clause that the navigation company should
448 get the same rate from Hauto as the rate from Penn Haven Junction; that is, that they should have the advantage of the Hazleton operators by the amount of that rate, which was called a lateral. Later that intention was carried on by the parties in fixing their rates from Hauto, so that the navigation company was given what was called a lateral, being the amount from Hazleton down to Penn Haven Junction. That is my understanding of the way the present condition arose. The intention of the tenth clause was that the rate from Hauto should be the same as the rate from Penn Haven; that is, that the navigation company should have the advantage which would be attributable to the rate from Hazleton down to Penn Haven. The present tariff says that the navigation company shall be allowed a lateral in accordance with the tenth clause of the lease, and that is what we have always contended the tenth clause meant, and that is what the Central Railroad of New Jersey has always accepted as the meaning of that clause.

Mr. COUDERT. I understand you to say that a shipper could not, from the tariff, tell what the rate would be, unless he understood these conditions?

Mr. DRINKER. He would have a reference which would put him on notice that there was a lateral there, and he could readily find out.

Mr. KINGSBURY. Then he would have to make further inquiries at another source? 449

Mr. DRINKER. There are no figures in the tariff. Penn Haven and Hauto are equally distant from Mauch Chunk, eight miles. In 1871 the Hazleton operator paid the lateral of about 35 cents for having his coal hauled from Hazleton to Penn Haven. The navigation company was itself to perform this preliminary service from its mines in the Panther Creek Valley through the tunnel, then near completion to Hauto. The tenth clause provided that the rates from Penn Haven and Hauto should be the same, so that the Hazleton operator would have to pay the 35-cent lateral for the service in delivering his coal to the trunk line, being the equivalent of the service performed by the navigation company with its own equipment over its Panther Creek Railroad and through the tunnel. After Penn Haven ceased to be a basing point, the underlying intention of this covenant was carried out by allowing the navigation company the lateral which the Hazleton operator thereafter paid as a part of the through rate.

Cross-examination by Mr. REYNOLDS: 450

Q. You spoke about the L. & N. E. furnishing low-side cars to the Lehigh Coal & Navigation Company. Why is it that you need low-side cars?

A. Because of the restrictions at the delivery point and on the lines of the delivering roads. The New York, New Haven & Hartford have a long and very extensive schedule of points to which 100,000-pound cars can not go, and the bridges will not carry them and the sheds will not hold them, and many of the sidings are not strong enough to hold them, so they restrict us, and the other roads are rapidly dismantling those small cars. The first equipment that the L. & N. E. built was of that type, that smaller type of car, which is very desirable for that kind of traffic. It does not apply, of course, to everything.

Q. The tendency altogether on the other lines is to build the large-capacity cars?

A. Large-capacity cars; but the small dealer is still in existence and has got to be taken care of in some way, and it is done by that means.

Q. Do you remember that the distance from Hauto to Elizabethport via the Jersey Central is 116 miles?

A. The distance by the Central Railroad to Elizabethport is 117.9.

Q. Do you know the distance from Hauto to Tamaqua?

A. Not exactly, I do not; ten or twelve miles, thirteen, somewhere along there. 451

By Mr. COUDERT:

Q. From Tamaqua to Tamanend is about how far?

A. I do not know those local distances.

By Mr. REYNOLDS:

Q. From Tamaqua to Philadelphia is 98.1 miles, is it not?

A. Yes, that is substantially it.

Q. And from Philadelphia to Port Reading is practically 90 miles?

A. We always use those figures.

By Mr. DRINKER:

Q. Do you know the distances from Penn Haven Junction and from Hauto, respectively, to Mauch Chunk?

A. I have not those.

Q. They are each practically the same, are they not, eight miles?

A. They are about practically the same.

Redirect examination by Mr. COUDERT:

Q. The rates to tidewater are the same, are they not, on the different routes that you mention?

A. The rate to Undercliff is $1.60 on prepared coal and to Elizabethport $1.55. It is the natural difference between the upper and lower ports that has always existed and makes some difference in prices.

452 Q. But there are no other differences on the other routes?

A. No.

Q. That is the difference between uptown and downtown?

A. Yes.

By Mr. REYNOLDS:

Q. Your answer is confined only to the three railroads you have named, is it not?

Mr. COUDERT. On the roads he has named; I asked him that.

A. Yes. I only named two to tide, the Central Railroad, $1.55, and the Susquehanna & Western, in connection with the L. & N. E. to Undercliff, formerly Edgewater, $1.60 on prepared coals.

By Mr. COUDERT:

Q. That five cents is simply to offset the difference in water freight from one place with the other?

A. Yes.

Q. So that the result is the same?

A. Yes. That difference has always existed, as long as I remember.

Recross-examination by Mr. DRINKER:

Q. The Susquehanna & Western does not operate on that route; the Lehigh & New England operates all the way down, with a trackage right over the Susquehanna. Is not that so?

A. It is just the terminal road that brings the coal in.

Q. Does that road, the Susquehanna & Western, haul the coal, or 453
does the Lehigh & New England have a trackage right over it?

A. I am not familiar enough with the operation end to tell that.

Q. Do you know whether there is a Lehigh & New England through tariff to tide?

A. I do not recall having seen one. They are matters of record.

T. B. KOONS, having been duly sworn, was examined as follows:

By Mr. COUDERT:

Q. What is your position in connection with the Central Railroad of New Jersey?

A. Vice president and traffic manager now.

Q. And you have been with the Central Railroad for how long?

A. Since November, 1880.

Q. Therefore you are very familiar with the anthracite traffic over that road?

A. Yes.

Q. Will you kindly explain, with reference to that map and naming the various places, how the coal originating in the coal regions tapped by your line goes to the various ultimate points of destination and over what railroads?

A. Commencing in the Wyoming region, from Mocanaqua to Wilkes-Barre, including the Plymouth district, it moves down over the Central Railroad of New Jersey, by way of Mauch Chunk to 454
Easton, bound for New England via the Lehigh & Hudson, Central of New England, and New York, New Haven & Hartford.

Q. That is your first route to which you testify?

A. Yes.

Q. That coal goes to New England?

A. Yes, sir.

Q. Over what other route does coal go to New England?

A. Via Bethlehem Junction.

Q. Down over the same road?

A. Over the same road.

Q. The Lehigh & Susquehanna?

A. The Lehigh & Susquehanna Division.

Q. To what junction?

A. Bethlehem Junction; Lehigh & New England Railroad to Campbell Hall; Central of New England; New York, New Haven & Hartford Railway.

Q. That is the second method of routing your coal to New England?

A. Yes.

Q. Now is there any other method by which you send coal to New England?

A. Yes, sir; by the same road by way of Wilkes-Barre, the Lehigh & Susquehanna Division, Phillipsburg, New Jersey main line to Jersey City; thence over the West Shore Railroad to Albany, over the same road via Rotterdam Junction, Boston & Maine Railroad, and in connection with the Rutland Railroad.

455 Q. Those are the three routes, and the only three routes, by which your coal is sent to New England?

A. All rail.

Q. By rail?

A. Yes, sir.

Q. Now, is there a further route, a water route, and if so, kindly describe it?

A. Yes, sir; from Wilkes-Barre over the L. & S. division to Phillipsburg; thence to Elizabethport, Port Johnston, Port Liberty, Jersey City.

Q. And from Jersey City?

A. By water.

Q. By water all the way to New England?

A. To New England; coastwise points as far as Maine.

Q. Those three railroad routes, and the fourth route, which you have termed the water route, are the only routes by which your coal goes to New England, or is there another way in which it may go?

A. No, sir.

Q. Is there any other way, to your knowledge, in which it could go to New England?

A. There are possibilities of other routes, but I have no knowledge of their use.

Q. Those are the only ones that are used?

A. Yes.

Q. How does your coal go to tidewater, both Philadelphia and New York, by what various routes?

456 A. From the Wyoming region to Philadelphia, down over the L. & S. division to Phillipsburg, New Jersey; thence over the Pennsylvania Railroad to Philadelphia, and Baltimore, Washington, and all south New Jersey. Also from the same territory to Allentown; thence over the Philadelphia & Reading, via Bethlehem Junction; thence over the Philadelphia & Reading to certain P. & R. territory.

Q. To certain P. & R. territory?

A. Yes.

Q. That is, intervening territory between Philadelphia and Reading?

A. Yes; right.

Q. In addition to those two routes are there any other routes by which your coal goes to tidewater? Is there any water route?

A. By canal from Coalport.

Q. Will you describe that route?

A. From the Wyoming region, from Wilkes-Barre over the L. & S. division to Coalport, near Mauch Chunk; thence by canal to Easton or Phillipsburg; thence over the Delaware Division Canal to Bristol.

Q. And from Bristol?

A. Thence by the Delaware River.

Q. By the Delaware River to Philadelphia and points south?

A. Yes, sir.

Q. Now, in addition to the four New England and the three tide- 457
water routes, does your coal proceed to any ultimate destinations elsewhere, by any other routes?

A. From the Wyoming district near Nanticoke it also moves via the Pennsylvania Railroad all over the Pennsylvania Railroad system, including Philadelphia, Baltimore, Washington, points in the South, and points in the West.

Q. So that it goes by the Pennsylvania Railroad from where?

A. Nanticoke.

Q. Over what road?

A. The Pennsylvania Railroad.

Q. Does it originate on the Pennsylvania? Does some of your coal originate on the Pennsylvania?

A. No; originates on the Central Railroad of New Jersey.

Q. It goes how far on the Central Railroad? Where does it connect with the Pennsylvania?

A. At Nanticoke.

Q. That is the junction?

A. Yes, sir.

Q. Of that portion of the Central Railroad and the Pennsylvania?

A. Yes, sir.

Q. Then it stays on the Pennsylvania until it reaches Philadelphia and may go to points south?

A. Yes, sir; and points west.

Q. Does your coal go over any other routes to the West? 458

A. No. sir.

Q. Does any of your coal go through Newberry Junction?

A. No, sir.

Q. Do you know why it is you do not send any coal out that way?

A. More recently we have had some inquiries, but generally speaking we have had no inquiries for westbound shippers on our road.

Q. So you do not make any western rates?

A. No, sir.

Q. These others you have mentioned are all through routes, and you have through rates for them?

A. Yes, sir.

Q. Those routes you have described are the only routes over which your coal goes to the various markets?

A. Yes, sir.

Q. That is only from the Wyoming region. How about the coal originating in other sections than the Wyoming section? I want the ultimate destination and routes of all your coal.

A. From the Audenried district, or known as the Lehigh district, over the Central Railroad by way of Tamanend, thence over the Central Railroad, the L. & S. division——

Q. Does any of that pass over the Panther Creek Railroad?

A. Not from the Audenried district. Thence over the L. & S. division of the Central Railroad to Easton; thence over the Lehigh
459 & Hudson, Central of New England, New Haven & Hartford Railroad. From the same region, by the same route via Bethlehem Junction, over the Lehigh & New England Railroad, Central of New England Railroad, New Haven & Hartford Railroad. From the same region, by the same route, over the L. & S. division to Phillipsburg; thence to Jersey City; thence over the West Shore Railroad, via Albany in connection with the Boston & Albany, via Rotterdam Junction in connection with the Boston & Maine Railroad.

Q. Does any of this coal from the Lehigh section going to New England go over the Lehigh & Hudson River Railway?

A. Yes, sir; from the same region?

Q. Yes; to New England.

A Yes, sir.

Q. Are there any other routes over which any coal originating on your line goes than those you have described?

A. No, sir.

Q. You have described them all fully, have you?

A. Yes, sir.

Q. Do you touch the Schuylkill field at all?

A. Only to the extent that we have one colliery from which we handle coal, and that is from the Mary D. colliery beyond Tamaqua.

Q. Do you handle any coal other than the coal from the collieries with which you have track connection?

460 A. Yes, sir.

Q. What other coal?

A. We handle from the Delaware & Hudson.

Q. That is, coal that is transshipped from the Delaware & Hudson?

A. Originating at points on the Delaware & Hudson, coming to us by way of Wilkes-Barre.

Q. Do you handle any coal originating on the Reading?

A. Yes, sir; by way of Allentown and via Bound Brook.

Q. Just show us that route, will you? Show us what connection you make there.

A. From the Reading district it comes by way of Reading Railroad to Reading, thence by Allentown, by way of Easton, L. & H. Railroad, Central of New England, and New York, New Haven & Hartford Railroad.

Q. Is there any advantage of that route over the apparently more direct one on this other line?

A. No; I am not sure that I have grasped your question, by "advantage."

Q. You say you handle a good deal of coal that passes over the Reading and connects with your road. Where?

A. At Allentown.

Q. And that coal goes to New England?

A. New England.

Q. Along the routes that you have already described?

A. Yes.

Q. Is there any particular reason for routing to New England over 461
the Lehigh & New England rather than over the Lehigh & Hudson Railway, or vice versa?

A. No.

Q. You can route the coal equally well over either of those roads?

A. The same.

Q. Will you tell me how close together are the junction points at Easton and Bethlehem Junction?

A. About twelve miles.

Q. And how close together are Burnside and Maybrook?

Judge BEATTIE. About two miles and a half.

Q. Can you tell me what is the reason for an allowance to the Navigation Company for coal originating at Hauto and Nesquehoning and destined to certain special persons?

A. It is by reason of the service that they perform from the Panther Creek region to Hauto and in conformity with the tenth clause of the lease.

Mr. REYNOLDS. You are misleading him with your question.

By Mr. COUDERT:

Q. Was there any allowance granted to the Navigation Company on coal originating at the points Hauto and Nesquehoning and destined to certain special persons?

A. During what period?

Q. During any period within your experience.

A. I think there were some allowances some years ago as to a few 462
of them.

Q. Do you know on what idea that was based or what was the cause of those allowances?

A. I can not answer that at this time.

Q. All you know is that allowances were made for that coal when it was sent to certain persons, rather than to other persons?

A. I believe that is the case.

Q. And you do not remember the dates?

A. No, sir.

Q. Have you yourself any information in regard to coal lands leased by the Wilkes-Barre Coal Company to others?

A. No.

Q. That is not within your jurisdiction?

A. That does not come within my jurisdiction at all.

Q. Does the railroad company itself lease coal yards?

A. To local dealers?

Q. To individuals.

A. Yes.

Q. Are there many such leases, do you know?

A. They are leased along the road; yes, sir.

Q. All along the road to certain individuals?

A. Yes, sir.

Q. Burns Bros. is one of them, I believe?

A. Yes, sir.

463 Q. You testified in regard to that before the Interstate Commerce Commission?

A. Yes, sir.

Q. Do the leases of other yards as to which you have spoken contain clauses similar to those?

Mr. REYNOLDS. I object. It is impossible to answer such a question as that. There are scores and scores of them, and the leases will speak for themselves. I will produce a copy of every lease, if you want it.

Mr. COUDERT. We want the fact, whatever it is, in the shortest possible compass.

By Mr. COUDERT:

Q. You are familiar with, and have testified pretty fully in regard to, the Burns lease?

A. Yes, sir.

Q. Do you know, of your own personal knowledge, whether some of these other leases have the same provisions for a special allowance?

A. I can not answer that.

Q. That you do not remember?

A. No, sir.

(The Burns lease referred to is already in evidence as Government Exhibit No. 45.)

Q. Do you know whether any or all of those leases contain a provision binding the lessee—that is, the person leasing the yard—to only

take into that yard coal coming over the line of the lessor, via the Jersey Central?

(Objected to by Mr. Reynolds.) 464

A. I could not answer that.

Q. Do you or do you not know of any such leases?

A. No, sir.

Q. So, as far as you know, they may or may not exist?

A. Yes.

Q. You do not know of any practice in that regard?

A. No, sir.

By Mr. REYNOLDS:

Q. You do not make the leases generally, do you?

A. No, sir.

By Mr. COUDERT:

Q. I show you a copy of a letter dated September 24, 1907, written by Mr. William T. Grier, apparently the coal freight agent of the Lehigh Valley Railroad, to Mr. T. N. Jarvis, the second vice president, and I ask you to read it. It contains an account of a meeting held between various individuals, of whom you were said to be one, and I ask you whether you were present at that meeting and whether the facts in regard to that meeting, as set forth in that letter, are substantially true?

A. I was present, yes, sir.

Q. And the facts are as set forth in this letter?

A. I do not remember the facts. The only interest we had was the rate feature.

Q. Suppose you tell us what you remember about that meeting. The question of the reduction of rates was discussed? 465

A. Yes, sir. The question of rates was involved by reason of our only being able to reach Albany and that region by way of, as I have already explained, Jersey City and the West Shore Railroad, or a more circuitous line. That was the only feature that was discussed or considered, so far as we were concerned.

Q. Was it stated at that meeting that the Delaware & Hudson had proposed to reduce published rates?

A. At this time I cannot testify to that fact. I do not remember.

Q. Do you or do you not remember that you learned that the Delaware & Hudson were considering the reduction of the published freight rate and that you reported the matter to President Baer; that is the fact, is it not?

A. I do not remember that, no, sir, that I reported it to Mr. Baer.

Q. You remember hearing about it?

A. I have no recollection of reporting it to any particular people. It is possible I did, but I could not testify positively to that.

Q. Do you recollect hearing about such a proposed reduction of rate by the Delaware & Hudson?

A. I did; yes, sir.

Q. You did hear about it?

A. The reduction that was considered at that meeting.

Q. After you heard about that proposed reduction, with whom did
466 you communicate in regard thereto?

A. I do not know that I communicated with anyone, as far as we are concerned.

Q. Did you communicate with Mr. William T. Grier, of the Lehigh Valley Railroad?

A. I did not communicate with him, because I was present with him at the meeting.

Q. Did you have any communication, oral or written, with him prior to that meeting?

A. I do not remember that.

Q. You do not remember whether you ever said to him that you proposed to report this matter to President Baer, with a view of persuading the Delaware & Hudson Company not to publish the proposed rates?

A. I do not remember. It is possible that I said that.

Q. It is possible?

A. Yes. I would not want to testify positively to that.

Q. You would not want to deny that as a fact if Mr. Grier testified that it was so?

A. No.

Q. What was done at that meeting in regard to the proposed reduction?

A. If I remember, the rate reductions were made, and that was the end of it.

Q. The reductions were made?

A. By the Delaware & Hudson; yes, sir.

467 Q. Did you take any part in the discussion?

A. No, sir; only except that meeting.

Q. Do you remember in November, 1906, any question regarding a proposed reduction of rates of the New York, Ontario & Western Railroad?

A. I think I do; yes, sir.

Q. Did you have any conversations or communications with Mr. William T. Grier, of the Lehigh Valley, in that connection?

A. I do not remember that I had any conversation with him. I had conversation with Mr. Childs, the general manager of the Ontario & Western.

Q. Did you have any conversation with Mr. Baer in regard to that proposed reduction?

A. No, I do not think so.

Q. You do not remember whether you had any conversation with him?

A. No.

Q. You talked with Mr. Childs?

A. Mr. Childs spoke to me about it.

Q. What was the substance of the talk? Did you approve or disapprove the proposed reduction?

A. I disapproved.

Q. You endeavored to dissuade him from lowering that tariff?

A. I pointed out to him I thought it was not necessary to make that rate; that the rate was a reasonable and fair rate.

Q. Do you remember that there was any conference in regard to 468 that?

A. No.

Q. Or anything further than your conversation with Mr. Childs?

A. Not on my part.

Q. Did you not know of any conference between President Baer and President Fowler?

A. No, sir.

Q. On that point?

A. No.

Q. Do you know what became of that proposal to make those reductions?

A. I do not remember. I do not know whether the rate was made or not; I can not tell at this time.

Q. Do you not remember that President Baer and President Fowler had a conference, in which the former, President Baer, insisted that——

By Mr. REYNOLDS:

Q. Were you present at any conference?

A. No.

Mr. COUDERT. I am asking him whether he remembers any conference.

Q. Do you remember any conference, at which you were present, or in regard to which you have any information, at which President Baer insisted that President Fowler should not advertise this lower rate? 469

A. I have not.

Q. You never heard that discussed?

A. No.

Q. You know, as a matter of fact, that that proposed rate was dropped?

Mr. REYNOLDS. You mean reduced?

Mr. COUDERT. The proposal to reduce the rate was dropped

A. I think there was a reduction made from the Wyoming and from that district during that period, but I can not absolutely say, except by reason of our own rates were reduced at that period.

Q. All you remember—and correct me if I am wrong—is, that you had a conference with Mr. Childs, who represented the New York, Ontario & Western in this matter, and that subsequent to such conference that proposed reduction of rate was dropped?

A. I remember that conversation or conference with Mr. Childs.

Q. Were you and he alone at that time?

A. Yes, sir; happened to be.

Q. There was no one else present?

A. No, sir; I think he met me on the ferryboat one morning and spoke to me about it.

Q. Did he speak of communicating with President Fowler in regard thereto?

470 A. No, sir.

Q. That is all you had to do with that particular rate?

A. Yes, sir.

Q. You endeavored to dissuade Mr. Childs from putting it into operation?

A. Yes, sir.

Q. In which you were wholly successful?

A. Yes, sir.

Q. In regard to the statement of facts contained in this letter of September 24, 1907, which you have read, you do not now state that those statements are not quite accurate, do you?

A. I can not say that; no sir. I do not remember the details of it.

Q. But they may well be quite accurate, as far as you remember, and you know you were present at the conference?

A. I was present at the conference.

Q. Are you familiar with the financial relations of the Central Railroad and the Lehigh & Wilkes-Barre?

A. No, sir.

Q. You have no information regarding that?

A. No, sir; no information.

Mr. Coudert asked Mr. Reynolds if he could furnish any information regarding a certain loan of twenty million dollars, from the railroad to the Lehigh & Wilkes-Barre Coal Company, made in 1910.

471 Mr. REYNOLDS. There was no such loan. In 1910 the Lehigh & Wilkes-Barre Coal Company floated a mortgage of twenty million dollars and sold the bonds under it, to the extent of about sixteen million dollars, to the public.

Mr. COUDERT. What was the relation of that loan, if any, to the railroad company?

Mr. REYNOLDS. None whatever, except that the railroad company had some prior bonds which it turned in, along with other bondholders, in exchange for the new bonds.

Mr. COUDERT. You will give me the proportions, the amount of bonds turned in by the railroad company, will you? It was a refunding loan?

Mr. REYNOLDS. No; it was not technically a refunding loan. Many of the bonds were paid off, I believe. It was simply a new mortgage, which was issued in regular course, and, as I recall it, everybody had an opportunity to take his money or a new bond; but the bonds sold at par and the credit of the Lehigh & Wilkes-Barre Coal Company was so excellent and the four per cent was so sure that about everybody insisted on reinvesting their money in the new bonds.

Mr. COUDERT. What did the railroad do?

Mr. REYNOLDS. The railroad has about six million dollars of those bonds. The railroad took about six million dollars in payment of an old loan.

Mr. COUDERT. Did the railroad guarantee that bond?

Mr. REYNOLDS. The railroad did guarantee that bond. 472

Mr. COUDERT. Then the railroad did have a relation to the bond; that of guarantor?

Mr. REYNOLDS. That was not what you asked me at all.

Mr. COUDERT. That is what I wanted to get at.

Mr. REYNOLDS. The Jersey Central guaranteed the bond.

Mr. COUDERT. I wanted the legal relation of the Jersey Central to those bonds.

Mr. REYNOLDS. It was a guarantor and it was also a pledgee of six million dollars of them.

Mr. COUDERT. And they are still outstanding?

Mr. REYNOLDS. And they are still outstanding.

Mr. DE FOREST. As I recollect, the Central Railroad Company took those new bonds in exchange for previous bonds of the Lehigh & Wilkes-Barre Company, which it had held; so, to that extent, it was an exchange of old bonds for new bonds.

Mr. REYNOLDS. My recollection is that the entire issue of bonds was sold through a syndicate, and that the syndicate sold the new bonds and paid off the old ones, technically.

Mr. DE FOREST. That is true.

By Mr. COUDERT:

Q. What, if anything, do you do to get the full tonnage of the Lehigh Coal & Navigation Company?

A. Nothing, more than for account of any other traffic. I of course 473 solicit the business, to that extent that I would any other.

Q. How do you solicit that business?

A. Ask the different shippers to favor us with the traffic all they can.

Q. In asking the Lehigh Coal & Navigation Company for their traffic, with whom do you confer? Who is the person with whom you confer?

A. Mr. Davies, generally.

Q. Then you go to him with that request for traffic?

A. Yes, sir.

Q. As a matter of fact, the bulk of their traffic does go to your road, does it not?

A. Quite a large portion.

Q. About two-thirds, is it not, or is it three-quarters? Do you remember, roughly speaking?

A. I do not remember exactly. I should say about two-thirds.

Q. Two-thirds to three-quarters?

A. Two-thirds.

Q. You think it would be nearer two-thirds than three-quarters?

A. Yes, sir.

Q. But it is at least that?

A. Yes, sir.

Cross-examination by Mr. REYNOLDS:

Q. What relations have you with the Lehigh & Wilkes-Barre Coal Company?

474 A. None whatever.

Q. Did you ever have?

A. No, sir.

Q. What relations have you with the Lehigh Coal & Navigation Company?

A. None whatever.

Q. Did you ever have?

A. No, sir.

Q. What is the shortest haul from the mines of the Lehigh Coal & Navigation Company to tidewater? Via what route is that shortest haul?

A. Via Mauch Chunk, Phillipsburg, and the Central Railroad of New Jersey to Elizabethport.

Q. Is that, as a matter of fact, the shortest haul of any tidewater run on anthracite coal?

A. Yes, sir.

Q. Is it a down-grade haul.

A. Most of it, yes, sir, up to Easton; it is a fair grade from Easton to Hampton, there is a reverse grade.

Q. All the way from the mines to Easton it follows the drop of the Lehigh River, does it not?

A. Yes, sir.

Q. The shortest and best route between the mines and tide?

A. Yes, sir.

Q. About how many meetings of freight traffic men and general freight agents do you attend a month to discuss rates? 475

A. From ten to fifteen and sometimes more.

Q. You are meeting with freight traffic managers and general freight agents to discuss rates, all kinds of rates, five or ten times a month right along?

A. Yes, sir.

Q. Is that true since 1906 and 1907, since this meeting with Mr. Childs was held and the meeting with Mr. Grier?

A. Yes, sir.

Q. And yet you do not remember all that took place at that meeting?

A. No, sir.

Q. Now, as I understand it, as a matter of fact, the Delaware & Hudson, in spite of all the hammering you gave them, went right ahead and reduced that rate?

A. Yes, sir.

Q. Right away?

A. Yes, sir.

Q. Did you reduce your rate?

A. No, sir.

Q. You still have been shipping coal to New England ever since, have you not?

A. Yes, sir.

Q. The effect on your coal traffic was not so disastrous as you were afraid it would be?

A. I was possibly overapprehensive in that connection. 476

Q. Events have proved you so, have they not?

A. Yes, sir.

Q. You went right at Mr. Childs hammer and tongs, too, did you not, trying to keep him from reducing his rate on the Ontario & Western?

A. Yes, sir.

Q. Did your best?

A. Yes, sir.

Q. You succeeded in that case, did you not?

A. No, sir; apparently not, as far as I know.

Q. October 16, 1906, was the date of that letter you wrote to Mr. Besler about Mr. Childs, was it not?

A. Yes.

Q. Do you happen to recall whether at that time a piece of litigation was pending in which the patriotic and public-spirited complainant was William Randolph Hearst?

A. Yes, sir.

Q. Do you remember that the defendants to that litigation were the Philadelphia & Reading, the Lehigh Valley, the Delaware, Lacka-

wanna & Western, the Central Railroad of New Jersey, the New York, Susquehanna & Western, the Erie, the New York, Ontario & Western, the Delaware & Hudson, and the Pennsylvania Railroad?

A. Yes, sir.

477 Q. Do you recall that that case was begun on November 3, 1902, before the Interstate Commerce Commission?

A. November, 1902; yes, sir.

Q. Do you happen to know that protracted hearings were held? Were you a witness?

A. I was a witness; yes, sir.

Q. Do you remember that the testimony in that case was about 4,500 pages?

A. I know it was very large; yes, sir.

Q. Do you happen to know that that case had been reargued just at this particular time, a few months before, and was then pending in 1906?

A. Yes.

Q. And your rates were involved in that litigation, were they not?

A. Yes, sir.

Q. Do you know what became of that case? Did the Interstate Commerce Commission agree with Mr. Childs that the rates were too high, or with you, that they were not too high?

A. The case was dismissed a few days ago by the Interstate Commerce Commission.

Q. Is that a copy of the order dismissing that celebrated proceeding of Mr. Hearst's [showing witness order]?

A. Yes, sir.

The Interstate Commerce Commission order shown witness is as follows:

478 Order of dismissal.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 3rd day of February, A. D. 1914.

Edgar E. Clark,
Judson C. Clements,
James S. Harlan,
Charles C. McChord,
Balthasar H. Meyer,
} Commissioners.

No. 644.

WILLIAM RANDOLPH HEARST

v.

PHILADELPHIA & READING RAILWAY COMPANY ET AL.

Upon consideration of the record in the above-entitled case,

It is ordered, That the complaint in this proceeding be, and the same is hereby, dismissed.

It is further ordered, That a copy of this order be served upon each of the parties to this case.

By the commission.

[L. s.] GEORGE B. MCGINTY, *Secretary*.

Q. You received that when? 479

A. I received it day before yesterday, or on Friday.

Q. So that the Interstate Commerce Commission never did reduce either the Ontario & Western rates or your rates that you were trying to persuade Mr. Childs not to reduce?

A. No, sir.

Q. Other than the highly interested piece of litigation precipitated upon you by Mr. Hearst, have you ever had from any shipper—a genuine shipper on your line—any complaint filed against your rates, your regulations, your practices, or your car distribution, on anthracite business, since you have been in connection with the traffic department of the Central Railroad?

A. No, sir; not that I remember.

Q. Have you any operators on your road other than the Lehigh & Wilkes-Barre Coal Company and the Lehigh Coal & Navigation Company?

A. Yes, sir.

Q. Wholly independent operators?

A. Yes, sir.

Q. You know them all intimately?

A. Yes, sir.

Q. Grew up with them as a boy?

A. Yes, sir; many of them.

Q. Are they dependent upon the anthracite business for their livelihood, most of them?

A. Yes, sir. 480

Q. Are they poor or rich, prosperous or downtrodden?

A. From my observation, they have prospered; very much so.

By Mr. COUDERT:

Q. They find the present price of coal very profitable to them, do they not?

A. I should think so. Of course, that is not my business.

By Mr. REYNOLDS:

Q. How much premium do they usually charge above what we charge? What is the general charge of the independents now, today, if you know, what premium above the company price?

A. They likely charge from fifty cents to a dollar a ton premium.

Q. So that they are very prosperous out of that extra charge?

A. Yes, sir.

Q. In answer to one of Mr. Coudert's questions, which indicated that there were two routes to New England, the L. & N. E. and the L. & H. route, and that there was a third all-rail route, you answered that that was all there were. Do you want your answer to be understood as stating that, from the three coal-producing regions there are only three all-rail routes to New England?

A. No, sir.

Q. Is that a fact?

A. As far as other roads are concerned, there are about seven routes.

481 Q. All-rail?

A. All-rail.

Redirect examination by Mr. COUDERT:

Q. But over those other routes your coal does not go?

A. No.

Q. You get all the Wilkes-Barre Coal Company's tonnage, do you not?

A. You mean the Lehigh & Wilkes-Barre Coal Company?

Q. Yes.

A. Yes; I should think we do.

Q. What do you do to solicit that tonnage?

A. No more than I do with any of the others. There are no efforts——

Q. You make no efforts?

A. No more than I do with any of the other shippers.

Q. What do you do? Send notices of tariffs and so on?

A. We distribute the tariffs to all the shippers on our road of those that ask for them.

Q. And that is practically all?

A. Yes.

Recross-examination by Mr. REYNOLDS:

Q. Is your road lined with industries from one end to the other?

A. Yes, sir. From Mauch Chunk to Easton there are a great many
482 industries, and from Easton to Jersey City there are a great many of them.

Q. You serve Newark, New Jersey.

A. Yes, sir.

Q. You serve the factory locality around Bergen Point?

A. Yes, sir.

Q. Elizabethport, Bayonne, South Shore?

A. Yes, sir.

Q. Is that, in your traffic experience, the richest fuel consumption territory in the United States?

A. Yes, sir.

Redirect examination by Mr. COUDERT:

Q. What is the proportion of coal sent by your prosperous and highly influential boyhood friends among the independents over your line?

Mr. REYNOLDS. I hand you a memorandum to refresh your recollection, that you made up on Saturday, Mr. Koons.

A. For the fiscal year ending June, 1913, it is about 1,691,000 tons.

Q. That is from the independent shippers?

A. Independent shippers.

Q. Are any of those shippers producing from lands leased by the Lehigh & Wilkes-Barre Company to them?

A. That I can not answer.

Q. That you do not know?

A. I do not know anything about that.

Q. You do not know how large a proportion of that tonnage comes from lands owned by the railroad coal company? 483

A. No; I do not.

Q. Are there not some shippers, as a matter of fact, whose tonnage you make special efforts, write special letters, use an especial amount of the superabundance of your energy to obtain?

A. I do not remember now.

Q. You do not deny there are such shippers?

A. I make efforts in every direction.

Q. There are some special shippers whom you make special efforts to get?

A. I do not have any special shippers in mind; no.

By Mr. REYNOLDS:

Q. The Red Ash Coal Company mines an outcrop which is owned by the Lehigh & Wilkes-Barre Coal Company. Is the Red Ash included in that list of independents?

A. No, sir.

At 1.15 p. m. a recess was taken until 2.30 p. m.

E. B. CROSLEY, having been duly sworn, was examined as follows:

By Mr. COUDERT:

Q. What is your position with the Reading Railway?

A. General coal freight agent, Philadelphia & Reading Railway.

Q. And you have been how long with them? 484

A. Since July 1, 1907, as coal freight agent and general coal freight agent.

Q. And before that time?

A. Before that time I was assistant general freight agent for several years.

Q. For three or four years?

A. Since 1898; from 1898 to 1907.

Q. So that you are thoroughly familiar with all the routes over which the coal originating on the Reading system goes?

A. As assistant general freight agent I had nothing to do with the coal movement. My knowledge of the coal business has been entirely since July 1, 1907.

Q. I am going to ask you to point out on the map, if you will, the various routes which coal originating in the coal region of Pennsylvania along your lines takes?

A. All of the coal on our line originates practically between Shamokin and west of Haucks. It does not go up to Haucks by some miles. That would cover that district; and from Tamaqua to Lykens.

Q. That is in the Schuylkill region?

A. It all originates in the Schuylkill region.

Q. Does all your coal originate in the so-called Schuylkill region?

A. Yes, sir.

Q. None of it in the Lehigh region?

A. No, sir.

485 Q. Name, as far as you may in the order of their relative importance, the various routes over which all of your coal there produced goes.

Mr. REYNOLDS. May I interpose one thing here? When Mr. Coudert uses the words "your coal" to these railroad men, it is understood it is the coal moving over the railroad from all shippers?

Mr. COUDERT. The coal from all shippers originating on their road. By originating on the road, I mean all coal shipped on the road and from collieries with which the road has some physical connection. Is that what you understand by originating?

Mr. REYNOLDS. Yes.

The WITNESS. That is what I had in mind in describing the territory. Now instead of naming these in the relative importance, I presume you have in mind the tonnage?

Q. The tonnage.

A. I think possibly it would be well to start and go round, because I do not carry in my mind just exactly the relative tonnage.

Q. Do it in your own way. You can give me the tonnage later.

A. We carry the tonnage for the New York Central and its connections, including the coal for transshipment to vessels at Buffalo, via the Philadelphia & Reading Railroad to Newberry Junction, whence it moves over the New York Central and connections. Via that route we also carry coal for deliveries on the Boston & Albany

486 Railroad. That coal moves via the New York Central and Albany and Boston & Albany.

Q. Going through Newberry Junction?

A. Going through Newberry Junction. The next route of importance is our route to New England, in connection with the New York,

New Haven & Hartford Railroad. That traffic moves via our line to Reading, thence to Allentown, thence via the Central Railroad of New Jersey to Easton; thence via the Lehigh & Hudson River Railway to Maybrook and beyond via the Central of New England and New York, New Haven & Hartford Railroad. Those two routes—the one I have just described and the route via Newberry Junction, New York Central and Boston & Albany—represent our two all-rail routes to New England.

Q. Do you have any other routes, all rail or otherwise, by which you send coal to New England?

A. There is a certain amount of anthracite coal which is transshipped at Port Richmond.

Q. Before we come to that, does any of your coal go by this Lehigh and New England Railroad to New England?

A. No, sir; no rates are established by that route.

Q. Now describe the water route to New England.

A. Practically all of the New England tonnage which moves by water, as to the coal which originates on our line, comes to Port Richmond and is there transshipped into vessels and moved to New England water points by water.

Q. That is a considerable amount, is it?

A. Yes. 487

Q. A substantial amount?

A. Yes, sir; a substantial amount.

Q. How does that compare in price with the railroad routes, in rates?

A. We only have the rate here to Port Richmond, and of course the rate from Port Richmond would vary somewhat.

Q. Is there a through rate on that?

A. No, sir; our railroad transportation and rate ends there at Port Richmond, when the coal is dumped into the vessel.

Q. Your coal could go to New England by way of the Lehigh & New England, could it not?

A. In that case we would deliver the coal to the Central Railroad of New Jersey just the same at Allentown, and they would deliver it to the Lehigh & New England at South Bethlehem, just the same as they would their own coal—a perfectly feasible route; but there has never been any necessity, so far as we know, for the establishment of such a rate.

Q. You have described the passage of the coal to New England by those three routes. Now describe your other routes, in your own order.

A. The next route in order here would be a route to Baltimore, or two routes to Baltimore, to Washington, Richmond, and points in the South, to which there are no through rates established, that route

being via Philadelphia, and in the one case in connection with the Baltimore & Ohio Railroad and in the other case in connection with
488 the Philadelphia, Baltimore & Washington.

Q. That is one of the routes to Philadelphia and points south, or rather to points south of Philadelphia?

A. That represents the two routes. After it gets to Philadelphia we turn that traffic over either to the B. & O. or to the P., B. & W.

Q. Let me ask you whether, in addition to that route to points south of Philadelphia, you also use the route of this little railroad [indicating], the Wilmington & Northern?

A. I think there are a few points on the Baltimore & Ohio Railroad—I am not clear as to that; I do not recall; but if there are, there are just a very few points where the movement is via the Wilmington & Northern.

Q. Do you happen to remember whether any of your coal goes over that Wilmington & Northern Railroad?

A. Oh, yes; there is quite a large amount of coal which originates on our lines which goes to Wilmington proper, for delivery in that city.

Q. But do I understand you to say that there is very little of that coal that goes beyond Wilmington through routed to somewhere else?

A. Very little.

Q. So that the bulk of coal that goes over the Wilmington & Northern is destined for ultimate consumption in Wilmington?

A. The larger proportion; yes, sir.

489 Q. Is it or is it not perfectly feasible to route coal over the Wilmington & Northern for consumption points south of Wilmington, and if it be feasible, how could it be done?

A. It might be done by practically rebuilding the Wilmington & Northern Railroad. So far as the map is concerned, it looks to be a perfectly feasible route; but I think I am safe in saying—that is more largely a transportation matter—but I think I am safe in saying that it would requre a different class of road from what the Wilmington & Northern is to handle any substantial increase in tonnage.

Q. Perhaps you do not understand my question. You testified that a good deal of tonnage, without saying how much, goes over the Wilmington & Northern Railroad to Wilmington?

A. Yes.

Q. I understand that the Wilmington & Northern terminates at Wilmington?

A. Yes.

Q. Now, having that tonnage at Wilmington, is there any reason why, by connecting with some other road, it would not go to the southern points?

A. Nothing except that that would mean an additional amount of tonnage.

Q. Any amount of tonnage that you chose to send might be sent via Wilmington to the South over that Wilmington & Northern road, as I understand it?

A. Provided it were capable of handling it physically.

Q. That is, there are railroad connections there, if you chose to make them? 490

A. Oh, yes, sir; putting the question in that way. The Wilmington & Northern Railroad connects at Wilmington—or rather at a point near Wilmington—with the Baltimore & Ohio Railroad, for example.

Q. In sending the through coal traffic to points south of Wilmington by the Philadelphia route you are guided merely by your own preference or convenience, are you not?

A. We are guided largely by the economy of operation, etc.

Q. Precisely; but, as a matter of fact, if you could not send the coal to points south of Wilmington through Philadelphia, you could send it by this other route, on the Wilmington & Northern?

A. To a limited extent; yes, sir.

Q. Limited only by the carrying capacity of the railroad?

A. Practically; yes.

Q. Now, you have testified as to those routes. Will you tell us of any other routes. Take, perhaps, the tidewater routes. You have shown one tidewater route to Philadelphia., Now, is there any other?

A. The tidewater route to Port Reading. If you mean by that, coal going to a tidewater point for transshipment by vessels, that traffic moves via Trenton Junction to Port Reading.

Q. Does a large proportion of your anthracite go over that route to Port Reading?

A. Quite a large proportion; yes. 491

Q. And that proportion goes over your road without passing over the lines of any other carriers, does it not?

A. Yes, sir.

Q. Passing through Philadelphia to Port Reading?

A. I beg your pardon, the Port Reading Railroad is not all Philadelphia & Reading Railway, if that is what your question is directed to.

Q. No; I understand the legal part of it; but it goes over the Philadelphia & Reading Railway and the Port Reading Railroad to Port Reading?

A. Yes, sir.

Q. And does all your anthracite destined for New York tidewater go that way?

A. So far as I know.

Q. Are there any other routes to tidewater than the two that you have testified to, namely, Philadelphia and Port Reading?

A. We have a tariff to Port Liberty via which I think a small, very small, proportion of coal moves. That is via Bound Brook and the Central Railroad of New Jersey.

Q. That is, some of your anthracite, a small portion?

A. Very small; probably not over three or four thousand tons a year.

Q. That is a practical route? I mean you could increase the quantity of anthracite that went over that route if you so desired?

492 A. I do not think we could. I think the Jersey Central can tell you better about that; but my understanding is that they are handling now between Bound Brook and Jersey City practically a maximum tonnage.

Q. Lacking terminal facilities?

A. I think that is true. That is a question that is outside of my jurisdiction.

Q. So that Port Reading and Philadelphia are your two great tidewater destinations for your coal?

A. That is true.

Q. Are there any other routes?

A. Then we send a certain amount of coal West, which follows the main line to Reading and thence west to Harrisburg and down to Shippensburg, where we connect with the Western Maryland Railroad and the Cumberland Valley Railroad, and those two roads connect with the Baltimore & Ohio Railroad, via which the shipments are made to the West.

Q. Shippensburg is the terminus of your railroad in that direction?

A. The terminus of our railroad in that direction; yes, sir.

Q. Roughly speaking, how far is that from Harrisburg?

A. About forty-two miles.

Q. Have you any water route to Philadelphia?

A. We publish a tariff in connection with the Schuylkill Navigation Company.

Q. Describe that route.

493 A. The coal comes via that route to Port Clinton. There it is dumped into barges, canal boats, and sent down to Philadelphia.

Q. And your counsel will later furnish me the proportion of coal that goes that way. Is there a substatnial proportion, do you remember now?

A. Roughly, I think about 50,000 tons a year only.

Q. Are there any other routes?

A. Those, I believe, represent substantially what would cover 95 per cent of our tonnage. We send some coal via White Hill, a point just west of Harrisburg, to points on the Cumberland Valley Railroad.

In the aggregate that is quite a substantial tonnage, but not as a proportion.

Q. Is it true that coal originating in this Panther Creek district, between Hauto and Tamaqua, can go to New York tidewater equally via the Central Railroad or by the Philadelphia & Reading Railway?

A. I should say it could go preferably via the Central Railroad, as comparing the two routes.

Q. Because it is shorter, you mean?

A. It is shorter and——

Q. Are there any differences in the rates?

A. We have no rate from the Panther Creek district to Port Reading.

Q. Have you a rate from Tamaqua, for instance?

A. We have a rate from Tamaqua to Port Reading; yes, sir. 494

Q. Now the coal from Tamaqua could, I understand, go either over your railroad, the Philadelphia & Reading, or over the Jersey Central, to New York tidewater?

A. You mean the coal from Tamaqua which originates in the Panther Creek district?

Q. Originating anywhere there.

A. You mean coal originating on our line?

Q. On your line there.

A. It could not, with our consent.

Q. That is exactly it.

A. Because we naturally have a road built; we have a road built to carry coal.

Q. If the Central Railroad had spurs going into those same colleries, there is no reason it should not go by that more direct route?

A. No reason at all.

Q. The only reason it does not so go is because you have spurs running into those colleries and they have not?

A. That is not exactly true, because I take it that your question is based on the theory that the lines are parallel.

Q. No, it is not based on any theory. I just want the fact about it.

A. It is not true. For example, sir, the Jersey Central stops in this direction, for instance, at Hauto. Now they could not possibly reach the colleries on that line, for example, by the construction of spurs [indicating on map].

Q. Without passing over your line? 495

A. Yes. Of course, that would not be a spur from their line, it would be a spur from our line.

Q. But could not your road carry coal originating along the Panther Creek route from Tamaqua to the tidewaters?

A. Yes, we could.

Q. And do?

A. No, we do not. We carry it to Port Richmond.

Q. You do so carry it, originating at Tamaqua, to Port Richmond?

A. Yes.

Q. Could not that same coal go over the Panther Creek Railway, connecting with the Central Railroad of New Jersey, and go to the tidewaters?

A. You mean would it be a physical possibility?

Q. Precisely.

A. Yes, there would be a physical possibility.

Q. What would be the inconvenience, if any?

A. The inconvenience would be, in the first place, that there would be no possible object—could be no possible object, either business or otherwise—for this traffic, which originates here between Pottsville and Tamaqua, being turned over to the Central Railroad of New Jersey.

Q. Except your suggestion that the route was a much shorter one?

A. It is shorter as regards this transportation from the Panther Creek district.

496 Q. Precisely.

A. Now then, the rate is the same to Port Reading as it is via the Jersey Central—and from the Panther Creek district to Elizabethport.

Q. So that, even though, as you suggest, this may be the shorter route, nevertheless the rates being the same, there would be no advantage in routing it that way?

A. Not from a rate standpoint.

Q. Rather than in routing it over the Reading route?

A. It is merely a case where a long line has met the short line rate.

Q. So that there is equality as between the two roads in reference to that coal?

A. I think so.

Q. There is no advantage in sending over one rather than the other?

A. No.

It is understood that counsel for the Philadelphia & Reading Railway and the Jersey Central will furnish, in the form of statistical tables, the amounts of tonnage passing over these various routes, as arranged with counsel for the Government.

By Mr. COUDERT:

Q. You have spoken of one route to tidewater through Allentown,
497 I think, over a connection of the Central Railroad. Could not that same coal——

A. I beg your pardon, I have not spoken of that.

Q. Was it one of the other witnesses?

A. I have spoken of a New England tonnage moving via Allentown and Easton.

Q. That is what I had in mind. Now I want to ask you whether, as a matter of fact, that tonnage could not go equally well over the Lehigh Valley Railroad?

A. We have a connection with the Lehigh Valley at Allentown. I am not at all sure about the Lehigh Valley connection with the Lehigh & Hudson at Easton. I do not know whether they have a connection there or not.

Q. Can you tell me in general where you get your tonnage from, from the mines of what companies?

A. I can not tell the order of production. I can tell you, of course, that we get a large proportion of the coal from the Philadelphia & Reading Coal & Iron Company, if that is the purport of the question.

Q. And some of the coal you get from independent producers, not connected with the railroad company or with the coal company, do you not?

A. We get quite a substantial amount from individual operators.

Q. And you get a substantial amount, as I understand it, from the Lehigh Coal & Navigation Company?

A. Yes.

Q. That goes mostly to what points, do you remember? 498

A. That goes mostly to points on our line.

Q. To points on your line, exclusively on your line?

A. Yes; in Pennsylvania.

Q. Largely to Philadelphia, do you mean?

A. Yes; Philadelphia and Reading and Lebanon, and various places in Pennsylvania.

Q. Some of the Lehigh Coal & Navigation Company's coal goes to New York tidewater, does it not?

A. Not over our line; no, sir.

Q. It goes over the Central Railroad of New Jersey?

A. I do not know.

Q. You do not know about that, but it does not go over your lines?

A. No.

Q. Do you know anything of leases of coal lands?

A. I have nothing to do with that; no, sir.

Cross-examination by Mr. REYNOLDS:

Q. In the region tributary to the tracks of the Philadelphia & Reading Railway Company, to the southwest of Tamaqua in the direction of Pottsville and Port Clinton, how far from Tamaqua is the colliery on your lines nearest to Tamaqua?

A. I should think, without knowing definitely, that it was eight or ten miles.

499 Q. For coal to move from that nearest colliery through Tamaqua over your road, and then over the Lehigh & New England Railroad, and then over the Jersey Central eastbound, would, therefore, involve a three-line haul for all that traffic, as against a one-line haul, would it?

A. That is true.

Q. That would mean three interchanges of billings and accountings, and all the inconvenience of a three-line haul against a one-line haul?

A. That is true.

Q. For the Philadelphia & Reading to move coal in the reverse direction—let us say, for example, from Nesquehoning—would involve a haul over the New Jersey Central from Nesquehoning to Hauto, over the Lehigh & New England from Hauto to Tamaqua and then, let us say, from Tamaqua over the Philadelphia & Reading around to New York Harbor, a three-line haul, in order to get the coal off the Jersey Central?

A. It would be open to the same objection that you have just stated in the other case.

Q. In both cases such a movement would involve handling over the Lehigh & New England Railroad?

A. That is true.

Q. To cross from the Jersey Central to the Reading, or from the Reading to the Jersey Central?

A. That is true.

Q. About what is the comparative distance, let us take from
500 Nesquehoning colliery, to New York via the Jersey Central on a single line, and from Nesquehoning via this circuitous, three-company route, to New York Harbor?

A. I should think the distance from Nesquehoning to New York Harbor via Mauch Chunk and Easton would be in the neighborhood of 140 miles, and via the route which you have just referred to would be 200 miles.

Q. So the ratio is about 140 to 200?

A. I think so.

By Mr. COUDERT:

Q. 140 miles by the Jersey Central and 200 by the Reading; is that right?

A. From the point on the Jersey Central to which Mr. Reynolds has referred.

By Mr. REYNOLDS:

Q. Nesquehoning is the nearest colliery to Hauto, is it not, on the Jersey Central?

A. So I understand; yes, sir.

Q. Refresh your recollection with that distance table. What does that show the distance from Hauto to Jersey City as via the Jersey Central?

A. It is only 128½ miles. It is nearer Mauch Chunk than I thought it was.

By Mr. COUDERT:

Q. The distance over the Jersey Central is 128 miles, you say?

A. Yes, sir.

Q. And of that 128 miles how many miles would be over the 501
Lehigh & New England?

A. I do not think any of it.

Mr. REYNOLDS. Nesquehoning is located directly on the Central Railroad of New Jersey.

Redirect examination by Mr. COUDERT:

Q. Can you tell us the freight rates on the various sizes of coal on your road to the New York tidewater, Port Reading, from the mine?

A. $1.55 on prepared sizes, $1.40 on the pea coal, $1.25 on buckwheat No. 1, $1.10 on buckwheat No. 2 and smaller. All of those are per gross ton of 2,240 pounds and include the dumping at Port Reading piers into vessels.

Q. Do you know what proportion of that goes to the Port Reading Railroad?

A. I do not know, offhand; no, sir.

Q. The rates are the same over the Jersey Central, are they?

A. You mean to Elizabethport?

Q. Yes; to tidewater.

A. You mean the rates that are published by the Central of New Jersey to Elizabethport?

Q. Yes.

A. I understand they are the same; yes, sir.

Q. How long have your rates been that, do you know?

A. Ever since I knew anything about them. 502

Q. That is how many years?

A. That is seven years, practically.

Q. During those seven years they have not changed?

A. They have not changed; no, sir.

Q. And the rates over the Jersey Central have not changed, have they?

A. I think not. I do not recall that there has been any change in those rates.

Q. Have you any information when, if at all, that rate was changed so as to be what it is now?

A. I have no recollection. I would have no recollection, and I have no recollection of the records that would show that; no, sir.

Q. Do you know whether your road gets any shipments of coal from collieries belonging to the Temple Iron Company?

A. I do not know. They do not unless the collieries are on the Philadelphia & Reading Railway.

Q. Do you testify that they do get any shipments of coal from collieries belonging to the Temple Iron Company that are on the Reading Railway?

A. I do not recognize—I do not know of any collieries on the Reading Railway that are the property of the Temple Iron Company or in anywise connected with the Temple Iron Company.

Q. Do you know whether your road carries any coal belonging to colliery companies separate and independent, as far as name goes, but which belong to the Temple Iron Company?

503 A. No, sir; I do not know of anything of that sort.

Mr. REYNOLDS. They do not, if you want to accept my statement.

The WITNESS. There is no colliery on our line that I know of as being in anywise connected with the Temple Iron Company.

By Mr. HEEBNER:

Q. Or any of its subsidiaries?

A. Or any of its subsidiaries.

By Mr. COUDERT:

Q. What methods, if any, do you employ to obtain coal tonnage for your line?

A. Do you mean the anthracite?

Q. Yes.

A. Practically all of the coal which moves over our line originates at collieries which are on the line.

Q. So you do not have to use any solicitation to get it? You get it in the course of events, naturally?

A. It would come to us naturally, the same as any other industry that was located along the line of the road.

Q. Is there no other way in which it could go?

A. In some cases; there are some collieries that have connections with other lines.

Q. What other lines?

504 A. I think there are one or two collieries that have connection with the Pennsylvania Railroad. I just happen to think of one colliery.

Q. Are there any that have connection with the Central Railroad of New Jersey.

A. Not that I know of; no, sir.

Q. Suppose that, for any reason, the Reading system was destroyed by a calamity or otherwise, could not operate; how could the coal from these collieries be taken to the market?

A. You mean if the Reading Railway were destroyed or demolished?

Q. If it disappeared.

A. Somebody else would have to construct a railroad there.

Q. How much trackage would it take, do you suppose, to reach the bulk of those collieries served by your line?

A. It is almost impossible to answer that, because the conditions vary. There are many collieries where it would require an extension of several miles of railroad.

Q. There are some where it would require only a half mile?

A. There are very few, I would say, where they could be reached with a half mile; but, of course, the distances would vary in the case of almost every colliery, according to its location.

Q. Could you give, from your recollection and great familiarity with the district, an approximate maximum and minimum of distances from the collieries to any road other than the Reading?

A. I would not want to undertake to do that, sir, because I do not 505
have to do with the physical territory at all, and it would be the merest guess if I said anything at all.

Q. You think it might be half a mile to several miles?

A. Yes; that would be my own judgment.

Q. But four or five miles would reach the great bulk of the collieries?

A. No, I would not think that that was the case.

Q. Seven or eight?

A. Then you want to bear in mind, too, Mr. Coudert, that four or five miles in the anthracite-producing region, as in almost any other coal-producing region, may mean five miles across a mountain.

Q. Because of the character of the country?

A. The character of the country; so that, speaking of distances, it is very misleading, and I should hesitate to attempt to give any testimony on that that would be worth anything at all on that point.

AGNEW T. DICE, having been duly sworn, was examined as follows:

By Mr. KINGSBURY:

Q. You are connected with the Philadelphia & Reading Railway Company?

A. I am vice president and general manager since January 1, 1913.
506 Two years prior to that time I was general manager. Eight years prior to that general superintendent, and before that time ten years as division superintendent.

Q. So that takes your connection with the Reading system back to what date?

A. The 1st of April, 1894.

Q. Prior to that time you had been in the railroad business, had you not?

A. For two years with the New York Central and for ten years with the Pennsylvania Railroad.

Q. How do your duties as general manager differ from your duties as general superintendent before?

A. They were enlarged somewhat and extended over some of the departments that I formerly did not have charge of.

Q. So that you are very familiar, generally, with the operations of the Reading system?

A. Yes.

Q. You are acquainted with the Port Reading Railroad, so-called?

A. I am.

Q. Do you hold any official position in connection with that?

A. I think I am vice president and general manager of that.

Q. What is its relation to the Philadelphia & Reading Railway Company?

A. I can only answer that question from an operating standpoint. The Port Reading Railroad has its own organization and operates its railroad. The engines and cars of the Reading Railway run over the Port Reading Railroad.

Q. Its terminus is on New York tidewater, the terminus of the
507 Port Reading Railroad?

A. It is on the bay, about 18 miles south of New York.

By Mr. REYNOLDS:

Q. On the Kill von Kull?

A. Kill von Kull properly, yes.

By Mr. KINGSBURY:

Q. A large amount of the coal traffic on the Reading Railway goes to Port Reading?

A. There is a very large tonnage, yes, of the Reading coal goes to Port Reading.

Q. Substantially all of it?

A. Oh, no; no, indeed.

Q. I thought Mr. Crosley did testify that all that went to tidewater——

A. All that goes to tidewater, for New York points, goes to Port Reading.

Q. I meant New York tidewater; I omitted that qualification. Then that is the fact, that nearly all that goes to New York tidewater goes to Port Reading?

A. Very nearly all of it, yes.

Q. But it could also go via Bound Brook and the Jersey Central to Port Liberty?

A. There is a line running, of course; the Central Railroad have a line from Bound Brook Junction to Communipaw and Port Liberty, so that coal can move via that route; but, if it were attempted to 508
move all of the New York coal that now goes to Port Reading, to Port Liberty, it would, I think, require very considerable addition, not only to the line of railroad between Bound Brook Junction and Port Liberty, but would require a very great extension of the piers at Port Liberty.

Q. But you have ample terminal facilities at Port Reading?

A. We have.

Q. Is that the only, or the controlling, factor in determining whether coal is to be sent to Port Reading or Port Liberty, the fact of the greater terminal facilities at Port Reading, or are there any other reasons which induce that route?

A. I really can not answer that, being confined to the operating department. We have developed facilities at Port Reading that, of course, we like to make use of.

Q. Are you acquainted with the rates between the coal fields and New York tidewater, and other points in general?

A. I can hardly say that I am.

Q. That is not within your province at all?

A. No; I have nothing at all to do with the rates.

By Mr. COUDERT:

Q. Nor the proportion of the rate that the Port Reading Railroad gets?

A. No.

By Mr. KINGSBURY:

Q. Nor with the financial relations between the Port Reading Railroad and the Reading? 509

A. No, sir; that is really not my affair at all.

Q. You are an operating man?

A. I am an operating man, pure and simple.

By Mr. COUDERT:

Q. Does any other freight besides coal go over the Port Reading Railroad to the tidewater?

A. Practically all of that business is anthracite and bituminous coal.

Q. Is there any reason why other freight should not go that way to tidewater?

A. There is no local consumption of any freight at Port Reading, and I would see no reason for sending any other freight via that line.

Q. But of course it could go that way and be at the New York tidewater, and go to any of the markets that the New York tidewater leads to?

A. It would be possible to handle it in that way.

Q. So that all the freight that passes over the Reading Railway other than coal freight might go to Port Reading?

A. Destined to New York Harbor, it might.

By Mr. HEEBNER:

Q. Eighteen miles below the city?

A. Yes; it would have to be transshipped at Port Reading to boat and hauled to New York via water.

By Mr. KINGSBURY:

510 Q. Where does the bulk of your merchandise freight, destined for New York and adjacent points, go to?

A. That comes from Bound Brook Junction to Communipaw, at Jersey City, over the Central Railroad of New Jersey.

Q. So that your merchandise freight comes to Jersey City and your coal freight goes to Port Reading?

A. Yes.

By Mr. COUDERT:

Q. In either event it has to be transshipped?

A. Yes. I want to qualify my statement as to its being physically possible to handle merchandise and other freight via Port Reading the same as coal is. Coal, you understand, is transshipped at Port Reading into barges and delivered to coal yards, practically all of which, I believe, are along the water front here in New York. Now the merchandise freight is brought into Jersey City and is largely distributed to the various stations in New York by car float. The cars themselves are loaded on floats and towed across the river, and it would not be possible, of course, under all conditions of storm and weather to handle car floats from the Kill von Kull at Port Reading up to New York.

Q. In other words, Communipaw is a more convenient terminal than Port Reading, but they are both possible terminals to New York Harbor?

A. They are both possible terminals, except I doubt if it would be possible to handle car floats between Port Reading and New York
511 under all conditions.

Q. Under all conditions it might not be so convenient, but if you look out of the window, you can see them coming now.

A. It might be done, but commercially it would not be possible, I would say.

Q. Commercially, it would not be as advantageous?

A. Not nearly so.

By Mr. KINGSBURY:

Q. Does the Reading Railway Company operate any seagoing tugs and barges for the transportation of coal from Port Richmond or Port Reading and other points?

A. I understand they operate some barges from Port Richmond but none from Port Reading.

Q. To what points do they operate from Port Richmond?

A. To points on the New England coast.

Q. Direct by water?

A. Yes.

Q. Going through Long Island Sound or via the ocean route?

A. I think they go outside. I am not familiar, however, with that operation.

Q. You do not know how extensive that traffic is?

A. It is rather extensive, and I think it is all handled outside of the Sound.

Q. Has the Reading formerly operated seagoing tugs and barges from Port Reading, in past years?

A. We operate tugs, but they handle individual barges from Port 512
Reading.

Q. I do not quite understand about individual barges. You mean not the railroad's own barges, but barges of individuals?

A. Yes.

Q. What is that method of operation?

A. The barges are taken to Port Reading and are loaded with coal and the Reading tugs deliver the coal, in those barges, to New York and take the empty barges back to Port Reading.

Q. That coal is all delivered to New York points, none of it through the Sound or to New England points?

A. I think it is all in New York Harbor.

Q. That is done at the present time?

A. Yes.

Q. Has it in the past operated any water service to New England from Port Reading?

A. Not to my knowledge.

Q. You are very generally acquainted with the various coal-carrying roads and their officers, are you not—know who most of them are?

A. Yes.

Q. I have before me here a list of the directors of the Lehigh & Hudson River Railway Company. George F. Baer is the first name on the list. He is president of the Reading companies, is he not?

A. Yes.

513 Q. Robert W. De Forest; is he connected with any that you know of?

A. Not with any of the Reading companies.

Q. Or any other companies you know of?

A. I think he is connected with the Central Railroad.

Mr. REYNOLDS. He is vice president and a director of the Central Railroad of New Jersey.

Mr. KINGSBURY. George D. Dixon.

Mr. REYNOLDS. George Dixon is vice president of the Pennsylvania Railroad.

Mr. KINGSBURY. Thomas P. Fowler.

Mr. REYNOLDS. He was vice president of the New York, Ontario & Western years ago. He is not now. I think he has retired now. Mr. Fowler is not, I think, connected any longer.

Mr. KINGSBURY. George H. Frazier.

Mr. REYNOLDS. He is in Brown Bros. banking house.

Mr. KINGSBURY. Lewis A. Riley is president of the Lehigh & Hudson Railway?

Mr. REYNOLDS. Yes.

Mr. KINGSBURY. Morris Rutherford.

Mr. REYNOLDS. He is connected with no other road.

Mr. KINGSBURY. Edward T. Stotesbury.

Mr. REYNOLDS. He is connected with about all the railroads. He is one of the defendants in this suit.

Mr. KINGSBURY. Eben B. Thomas.

514 Mr. REYNOLDS. President of the Lehigh Valley and a director of it.

Mr. KINGSBURY. William F. Truesdale.

Mr. REYNOLDS. President of the Lackawanna and a director of it.

Mr. KINGSBURY. Frederick D. Underwood.

Mr. REYNOLDS. President of the Erie.

Mr. KINGSBURY. Samuel D. Warriner.

Mr. REYNOLDS. President of the Lehigh Coal and Navigation Company.

Mr. KINGSBURY. Rollin H. Wilbur.

Mr. REYNOLDS. Vice president of the Lehigh Coal and Navigation Company.

Cross-examination by Mr. REYNOLDS:

Q. As the operating man in charge of the Reading system, and the Port Reading Railroad, you have no discretion whatever, have you, except to follow the card manifests on the cars?

A. Not the slightest.

Q. You simply have to transport any commodity wherever the shipper orders you to?

A. My duty is to operate the railroad. I have nothing to do with the routing of freight.

Q. If a shipper orders coal sent to Port Reading, no matter who he is, you have to take it to Port Reading? That is all your job is?

A. We do that.

Q. Now, in connection with your merchandise traffic, you run 515
some despatch lines from Jersey City to Harrisburg, do you not?

A. Yes.

Q. In connection with the Jersey Central?

A. Yes.

Q. Via Allentown?

A. Yes.

Q. Those trains are scheduled to leave at either end at five o'clock at night and are at their destination in the morning, are they not?

A. Yes.

Q. Would it be possible to handle any such merchandise despatch business via any car floats or any other long tow to Port Reading, if you had the facilities there?

A. It would be utterly impossible.

Q. Do you know whether a great deal of the merchandise despatch business at the New York end is physically delivered in Jersey City via trucks and drays which cross the ferries?

A. I have no personal knowledge of that.

Q. The tugs which you speak of as operating from Port Reading are all the small harbor tugs, are they not?

A. Yes, sir.

Q. You have no fleet of seagoing tugs at Port Reading? 516

A. No fleet of seagoing tugs at Port Reading.

(Adjourned until Thursday, February 19, 1914, at 11 a. m.)

Met pursuant to adjournment at No. 2 Rector Street, New York 517
City, Thursday, February 19, 1914, at 11 o'clock a. m.

Present: The examiner; Messrs. Coudert and Kingsbury, special assistants to the Attorney General, for the Government; Messrs. Heebner, Reynolds, Turner, and Drinker, for defendants.

RICHARD T. DAVIES, recalled.

By Mr. KINGSBURY:

Q. At the last session you were asked to produce a statement showing the total amount of coal transported over the tracks of the Panther Creek Railroad classified according to the railroads over which it was to pass?

A. Yes, sir.

Q. Have you prepared and do you produce such a statement?

A. Not exactly that. I have prepared the entire distribution of our tonnage through the different gateways or outlets for the three years, but that includes the tonnage of one colliery that I have not been
518 able to get actually now, but will furnish later. A portion of the coal went into the canal, and, therefore, would have to be separated from the other. It is rather a laborious operation, but we will give you that very shortly.

Q. All of the coal shown on this statement, except that from the Nesquehoning colliery, first passes over the tracks of the Panther Creek Railroad?

A. Yes, sir.

Q. And you will supply a statement of the amount of coal coming from the Nesquehoning colleries?

A. Yes, sir.

Q. So that that may be subtracted and total amount shown?

A. Yes, sir.

By Mr. DRINKER:

Q. Will you be able to state where the coal from the Nesquehoning colliery went?

A. A portion of it goes to Coalport for the canal reloading, and all the rest of it goes over the Central Railroad line.

Q. Does not some go into the storage yard?

A. No. There was at one time a small tonnage carried back, but it involved a charge for transportation of 10 cents a ton, and so we have kept that latterly out of the storage yard.

Q. Then you will furnish an additional statement showing the tonnage in this statement coming from the Nesquehoning colliery and where that went?

519 A. Yes, sir.

Q. So that may be subtracted from these items and show what Government's counsel has asked you?

A. Yes, sir.

By Mr. KINGSBURY:

Q. Does this statement show all the coal transported by canal?

A. Yes, sir. That is the total.

By Mr. COUDERT:

Q. Does it show it separated?

A. Yes. It is not an itemized statement of each year separately. Those are the shipments for each year.

Government's counsel offered in evidence statement produced by the witness (marked "**Exhibit 49**"), as follows:

LEHIGH COAL AND NAVIGATION COMPANY.

Shipments.

Destination.	1911	1912	1913
1. L. & S. Div. C. R. R. (local)	551,213.10	477,874.08	695,526.03
2. C. R. R. of N. J. (local)	462,714.00	528,109.00	491,695.12
3. C. R. R. of N. J. (tide)	1,148,668.03	940,287.01	899,192.19
4. P. R. R. Bel. Del. Div. C. R. R.	182,790.10	269,411.12	79,779.06
5. Lehigh & Hudson Riv. Ry., C. R. R.	15,863.02	6,491.17	3,471.07
6. Coalport for Canal, C. R. R.	320,736.03	218,803.10	230,031.00
7. N. Y., N. H. & H. R. R. via C. R. R., C. R. R.	118,851.05	76,971.10	3,144.10
8. C. N. E. R. R. via L. & N. E., C. R. R.	26,584.02	19,567.18	881.15
9. Walkill Valley via L. & N. E., C. R. R.	6,342.04	2,951.15	 520
10. West Shore via L. & N. E., C. R. R.	2,355.05	989.18	.....
11. Erie R. R. via L. & N. E. & Goshen, C. R. R.	8,773.07	8,270.00	.....
12. L. & N. E. R. R., C. R. R.	36,823.00	24,067.11	.....
13. P. & R. R. R. local via Tamaqua	481,879.13	421,245.17	249,809.05
14. P. & R. R. R. Pt. Richmond	68,213.15	57,202.15	43,005.06
15. P. & R. R. R. Nth. Penn. via Hauto	658.12	655.17	478.13
16. P. & R. R. R. E. Penn. via Hauto	310.00	7,037.05	8,884.18
17. Retail at mines	61,291.08	78,005.02	36,305.18
18. Locomotive coal	21,163.12	21,963.07	21,523.07
19. Shops, power house, and collieries	58,994.07	107,862.09	119,304.17
20. Undercliff via L. & N. E.	.....	153,613.08	217,114.14
21. L. & N. E. R. R.	.....	40,311.04	78,142.05
22. West Shore via L. & N. E.	.....	7,840.15	18,875.10
23. B. & M. R. R. via L. & N. E.	.....	27,593.10	60,987.07
24. B. & A. R. R via L. & N. E.	.....	6,031.09	15,927.18
25. Erie R. R. via L. & N. E. and Goshen	.....	862.08	464.04
26. C. N. E. R. R. via L. & N. E.	.....	14,912.04	28,564.06
27. N. Y., N. H. & H. R. R. via L. & N. E.	.....	44,016.15	124,350.01
28. N. Y. C. & H. R. R. via L. & N. E.	.....	76.00	10,219.14
29. P. R. R. via L. & N. E., Martins Creek	.....	.....	71,939.05
30. Lehigh Valley via L. & N. E.	.....	.....	66,164.14
	3,574,225.18	3,563,036.05	3,584,784.16

The totals above given cover calendar years.

Counsel for the Lehigh Coal and Navigation Company, in pursu- 521
ance of the request of counsel for the Government at the last hearing, produces statement by the secretary of the Lehigh Coal and Navigation Company, showing first the total acreage of anthracite-bearing lands leased by the Lehigh Coal and Navigation Company to other parties as lessees (marked "**Exhibit 50**"):

Maryd Coal Co., per agreement of June 25, 1903, pamphlet copy attached	863
Tenants at will:	
Est. of C. S. Shindel, lease Jan. 9, 1907	47
Moses Neyer, lease Nov. 20, 1903	43
	953

Second, copies of the eighth covenants in the leases above named relative to the shipment of the output of such lessees.

The lease from the Lehigh Coal and Navigation Company to the Maryd Coal Company, dated June 25, 1903:

Eighth. The lessee shall and will ship all the coal that shall be mined from the demised premises in cars furnished by the Central Railroad Company of New Jersey, and so consign it as to reach its destination either by the canal of The Lehigh Coal and Navigation Company or by railroads owned, leased, or controlled by the said Central Railroad Company of New Jersey, or if such coal be destined for points not reached by said canal or by railroads owned, leased, or controlled by said Central Railroad Company of New Jersey, it shall be shipped as far as possible over such railroads. And this demise is expressly made upon the condition that such coal shall and will be so shipped. Provided, however, that the lessee shall have the
[1]522 right to ship, without additional charge for the privilege, one-fourth,
523 and no more, of the coal mined from the demised premises by other routes than those above designated, so far as shall, in the opinion of the president of the Lehigh Coal and Navigation Company, be permitted by the contracts now in force between the Central Railroad Company of New Jersey, The Lehigh Coal and Navigation Company, and the Alliance Mining Company.

Lease to estate of C. S. Shindel, dated January 9, 1907, containing the following clause:

The lessee to ship all coal mined and shipped by railroad from the said demised premises, in the cars of ——— ——— Company, or in cars which reach their destination exclusively by railroads owned, leased, or controlled by the said ——— Company.

Lease of the Lehigh Coal and Navigation Company to Moses Neyer, dated November 20, 1903, contains the following clause:

The lessee to ship all coal mined and shipped by railroad from the said demised premises, in the cars of C. R. R. Co. of N. J. Company, or in cars which reach their destination exclusively by railroads owned, leased, or controlled by the said C. R. R. Co. of New Jersey Company.

524 Third, the approximate total output from the lands so held under lease during the five years ending with 1913, was one million tons.

Mr. Drinker, in pursuance of request of counsel for Government at the last hearing, produced statement of coal purchased for the Lehigh Coal and Navigation Company during the years 1910, 1911, 1912, and 1913, by the general coal agent of the Lehigh Coal and Navigation Company, as follows:

Purchased coal.

Tonnage year—	
1910	206.18
1911	49,335.15
1912	121,913.17
1913	22,430.03
Total	193,886.13

[1] So numbered in original.

By Mr. KINGSBURY:

Q. In finding a market for the Lehigh Coal and Navigation Company, has that company tried to obtain through rates on anthracite coal via the Philadelphia and Reading Railway to Harrisburg and thence to western points?

A. The only effort that we have made by way of Harrisburg has been to get a proportion of the existing rate to Harrisburg of ninety-five cents, a similar proportion as was allowed on other Reading shipments that went out by way of Tamaqua. We were not able to get any proportion of that rate. [1525]

Q. Did you confer with any officials of the Reading Railway Company in the matter?

A. I conferred several times with Mr. Crosley.

Q. You requested him to name such a rate?

A. I requested him for a proportion of the rate.

Q. What did he do?

A. That was refused.

Q. Repeatedly?

A. Yes. I suppose two or three times.

Q. Did he state any reason for his refusal?

A. I recall that the general reason was that the rate was a low one and would not stand any division.

Q. Did he say anything about the Reading Company's not being ready to open up the western territory to you?

A. Not specifically.

Q. To refresh your recollection I read to you an answer which you are reported in the stenographer's minutes as having given in the Interstate Commerce Commission proceeding, docket No. 4914, in response to the following question, "What reason did Mr. Crosley give for declining to name the through interline rate to take care of your coal?" Answer, by Mr. Davies, "I do not know that he gave any particular reason, excepting that they were not ready to open up that western territory to us. I do not recall any other reason." Does this refresh your recollection?

A. I think that Mr. Crosley made a statement of that sort. I can [1525] not give the exact language, but that was the general impression that I got.

By Mr. COUDERT:

Q. And you so stated in that proceeding?

A. Yes. That is my memory.

By Mr. KINGSBURY:

Q. Is it the fact that the Lehigh Coal and Navigation Company operates the Lehigh and New England Railroad?

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[1] So numbered in original.

A. No, sir.

Q. In the same proceeding, you gave the following answer:

Q. (By Mr. REYNOLDS.) Mr. Davies, you now have through rates to the West, have you not?

Mr. DAVIES. Yes, sir.

Examiner SMITH: Via what line?

Mr. DAVIES. The Lehigh Valley—a connection with the Lehigh Valley and the Lehigh and New England Railroad, which we operate.

A. The Lehigh and New England road is all that I said. I am positive that I did not add those words, because they were not in answer to any question, and it is not the fact.

Q. That is an error of the stenographer?

A. That is an error of the stenographer.

By Mr. COUDERT:

Q. Who does operate that road, if you know?

A. My general knowledge is that the Lehigh and New England Railroad is operated by its officials. That is all I know about it.

526 Q. Is it not possible that you merely had in your mind the fact that the Lehigh Coal and Navigation Company, by reason of its ownership of stock and practical control of that railroad, in that sense at least operated it? Is not that what you had in your mind?

A. I might have had that in my mind. But, not having made the statement, I ought not to be held responsible for it.

Q. You think the stenographer was mistaken in putting that in?

A. I am sure he was, because I would not make such a statement, knowing it was operated by its own officials, and entirely free from anything that I had knowledge of or to do with.

Cross-examination by Mr. REYNOLDS:

Q. In testifying as to your recollection as to the reasons which the Philadelphia and Reading Railway Company gave as to not putting in a rate to Harrisburg, as to what period are you testifying; that is, when does your recollection place the conversation?

A. From the beginning, just prior to the time we made shipments over that road, first for account of the Lehigh Valley and afterwards the Susquehanna Coal Company—coal sold to them.

Q. That is about the time the Philadelphia and Reading put in the Harrisburg tariff?

527 A. I do not know when the tariff was put in. I have a copy of it. That was in existence and they permitted us to ship to Harrisburg on that tariff, with the understanding in the beginning that there should be but twelve thousand tons go out that way.

Q. Then that conversation, to your recollection, as to the reason given, is after that tariff was in?

A. Yes.

Q. That tariff was P. and R. tariff 296A, put in effect April, 1909, was it not?

A. That I could not testify to. I could produce a copy of the original tariff which was given us. It was not a printed tariff. It was a typewritten yellow sheet tariff.

Q. After refreshing your recollection by reading from docket 4914, can you say that they used P. and R. tariff 296A?

A. I should rather go to my own files of record. We had no general Reading tariffs until about that time into that territory.

By Mr. COUDERT:

Q. Your recollection is that the tariff about which you were speaking is the tariff of 1909, to which Mr. Reynolds referred, and you will look it up?

A. It is entirely different from any tariff we had from the Reading.

By Mr. REYNOLDS:

Q. I show you a letter which purports to be a copy of one from you to Mr. Wilbur, dated October 25, 1909, to refresh your recollection. 528

[Letter shown witness.]

A. I recall that.

Q. Do you recall writing that letter?

A. I do.

Q. You recall that that letter was written subsequently to the tariff from Tamaqua to Harrisburg of the P. and R., naming ninety-five cents as a proportional rate?

A. Written subsequently; yes, sir.

Q. It refers to the existence of the prior tariff?

A. Yes, sir.

Q. From Tamaqua to Harrisburg?

A. Yes, sir.

Q. That made a proportional rate on coal shipped from Tamaqua by the Lehigh Coal and Navigation Company to and via Harrisburg of ninety-five cents, did it not?

A. Yes, sir.

Q. And you so said in this letter to Mr. Wilbur?

A. Yes, sir.

Q. At that time the Pennsylvania Railroad Company had in effect, according to your letter here I. C. C. A. No. 1416, naming a rate via Pittsburgh, Fort Wayne, and Chicago from Harrisburg on anthracite of $2.55; is that right?

A. Yes.

Q. That was in effect?

A. I must have had that tariff before me to have made that statement in the letter, and I probably did.

529 Q. That gave you a total of $3.50 as a through rate from Tamaqua to Chicago for your coal, did it not?

A. It did and is so stated in my letter.

Q. How long did you have that rate of $3.50 from Tamaqua to Chicago available to you?

A. I assume it is available now. I do not know that it has been withdrawn.

Q. At any rate you think it has been in effect since 1909?

A. I believe it has.

Q. What is the rate, if you know, and do not answer if you do not know, generally from the anthracite coal regions to Chicago by most of the road lines?

A. I only know from hearsay that it is $3.50. That is the rate.

Q. So that at the time of which you are testifying that among the reasons given to you by Mr. Crosley was one to the effect that not the railway but the coal company did not want you to go West, Mr. Crosley gave you the benefit of a combination of rates which permitted that shipment from Tamaqua, Pennsylvania, in the Panther Creek region, to Chicago, for $3.50; that is true, is it not?

A. Yes.

Q. In this letter you state that the Reading did not want to issue this tariff because their proportion of the rate is so very small. Was that stated to you as a reason?

530 A. As a reason. The ninety-five cent rate was too small to permit of a division.

Q. You did not mean to say that it was the Reading's position that if they got all of the ninety-five cents for hauling coal from Tamaqua, the eastern end of their rails, to Harrisburg, the western end of their rails on that branch, for ninety-five cents, they were dissatisfied? That was not their position, was it?

A. I do not know anything about that.

Q. What did you mean by this answer about division then?

A. What I meant by that was that we were to receive a division on all other business that went over their rails, and we thought we ought to have a proportion of the ninety-five cent rate if we gave them tonnage. That was the reason.

Q. Then there was some talk at that time, was there, about an issue of that kind that you, the Lehigh Coal and Navigation Company, did not want to pay a full ninety-five cents from the shipping point, Tamaqua, to Harrisburg, and if you did, you thought you ought to have some of that ninety-five cents paid back to you because of your lateral service in the Panther Creek region?

A. Exactly.

Q. How much did you ask for at that time?

A. I might say, in a general way, that we asked for the same division that we had on coal going into the Reading territory generally—local territory.

531

Q. What was that division?

A. It is twenty-five cents a ton on their tariffs.

Q. On the State business they made you an allowance of twenty-five cents out of whatever the rate was?

A. Yes.

Q. Were you careful to restrict that allowance to business moving within the State?

A. Yes. Their tariffs only allow for shipment within the State. That is why I thought that the tariff to Harrisburg, within the State, we should be entitled to the same allowance on, because we did not know what was going to be done with the coal beyond that point positively.

Q. Then, the upshot of the matter was that you got the tariff to Harrisburg which enabled you to go West, but the Reading did not give you twenty-five cents out of their share of the rate to Harrisburg from Tamaqua?

A. They did not give us anything.

Q. They did not give you a cent?

A. No, sir.

Q. And would not?

A. And wouldn't.

By Mr. COUDERT:

Q. Does any of your coal go that way now?

A. No. None since, I think, 1912. I think there was some went out.

532

Q. That way?

A. Yes.

Q. But none since?

A. No. We just stood the loss.

By Mr. REYNOLDS:

Q. But you got the same rate from Tamaqua to Chicago that everybody else in the coal region got from shipping points to Chicago?

A. I assume so; yes, sir.

Q. I show you copy of a letter dated April 7th, 1913, purporting to be written by you to Vice President Wilbur to refresh your recollection. [Letter shown witness.]

A. I remember that letter. I wrote that.

Q. Do you remember writing that letter?

A. I do.

Q. Was it then, on April 7th 1913, and is it now true that for some reason or other you thought it best not to enter the western territory for direct sale of your product?

A. Yes.

Q. That is what you thought?

A. I thought so. Because we had established a connection with a selling house in the West, who were going to take care of the business on a moderate commission as a beginning.

Q. So that your coal was moving freely to the West and you were not extending with an agency and selling force of your own?

533 A. That is the idea; yes.

Q. As a salesman you have always been able to sell coal in this territory, have you not?

A. I have been fairly successful.

Q. You have been fairly successful, have you not?

A. Yes, sir; I think so.

Q. Are you not probably the most successful coal sales agent in the East?

A. I think not.

Q. Who is?

A. I do not know who the other man is.

Q. I show you a copy of a letter purporting to be written by E. B. Crosley, under date of April 22, 1909, to you. That date was just at the time the tariff was put in, you will recall—is that true?

A. Yes. I remember receiving that letter very well.

Q. In that letter it is stated that the arrangement was made for the shipment of twelve thousand tons which you had sold to the Susquehanna Coal Company?

A. Yes.

Q. That was the fact, was it not?

A. Yes.

Q. You have a sufficiently distinct recollection of the contents of that letter to say that that represents the facts as they existed at that time?

534 A. Yes.

Q. In a general way is that a repetition of the conversation which it purports to confirm?

A. I think it is.

The letter is as follows:

PHILADELPHIA & READING RAILWAY CO.,
OFFICE OF THE COAL FREIGHT AGENT,
Reading Terminal, Philadelphia, April 22nd, 1909.

Mr. R. T. DAVIES,
G. C. A. Lehigh Coal & Navigation Co., Philadelphia, Penna.

DEAR SIR: Referring to conversation of to-day, I beg to confirm that arrangements have been made whereby we will accept for transportation to Milton at the rate of 95 cents per gross ton from Tamaqua, the unshipped portion of the 12,000 tons of coal which you advise have been sold to the Susquehanna Coal Co. We understand from

you that probably 1,800 or 2,000 tons have already been shipped via Harrisburg.

Also confirming conversation, I would say, that our transportation department have consented to this arrangement with some hesitancy on account of the heavy grades and the limited facilities at our Milton yards, involving a considerable extra expense, as compared with the movement to Harrisburg. The desire of our management being to comply, as far as possible, with the wishes of your company 535
and the Susquehanna Coal Co. they finally consented to accept this particular shipment on the assurance that same would not be considered as a precedent for the future.

Trusting that the arrangement will be satisfactory, I remain,

Yours very truly,

(Signed) E. B. CROSLEY,
Coal Freight Agent.

Q. Was there ever in any of the correspondence or conversations between yourself and the officials of the Reading Company a discussion as to whether the Reading could legally on an interstate shipment give the Lehigh Coal and Navigation Company any allowance out of the through rate interstate?

A. I am not entirely clear on that. I am not clear as to that.

Q. Do you have a recollection that that question was discussed?

A. If there was any correspondence showing it it would refresh my recollection. I do not recall anything absolutely as to that. I think that might well have been the case.

Q. Do you remember discussing the matter with Mr. Wilbur, the vice president of your company?

A. I do not recall that unless my memory was refreshed.

Q. Do you remember his showing you any letter on that particular feature of the question?

A. I do not remember it; no. 536

Q. Do you remember referring the question to your counsel as to whether it would be legal for the L. C. and N. Company?

A. I do not recall it, I am perfectly frank.

Q. You do not recall any such discussion?

A. No; I do not recall the discussion.

Redirect examination by Mr. COUDERT.

Q. Why was it that the Reading limited you to twelve thousand tons shipment to the West?

A. I do not know that there was any special reason, excepting that we may have asked to ship twelve thousand tons out at that time.

Q. I understood you to say that you had some arrangement by which they allowed you to ship only twelve thousand tons?

A. We asked them if we could ship a tonnage of coal, they wanted to know how much it was, and we said twelve thousand tons. That was afterwards very considerably increased.

Q. So that whenever you wanted to increase that tonnage, you had to get their permission?

A. No. We kept on shipping—as I understand it, afterwards we made sales in considerable volume, and it went out without objection.

537 Q. Even in excess of the twelve thousand tons?

A. Yes, sir.

Q. How was that arrangement about the twelve thousand tons made? Was it done in correspondence, or just you and Mr. Crosley orally?

A. It might have been either. I do not recall. There is a letter there referring to it.

Q. Is there any other reference to that?

A. I do not know of any.

Q. On what ground, as you understand it, was the Reading able so far to control your shipments as to tell you how much you should ship and how much you should not?

A. I do not think there was any effort to control that at all, because in 1911 I think we shipped 150,000 tons possibly, or upward.

Q. Without getting any proportional allowance?

A. Without getting any proportional allowance.

Q. That also all passed through Harrisburg?

A. That all passed through the same avenue.

Q. How long was that subsequently to the 12,000 tons you had been limited to originally?

A. That followed soon after. I think in 1910 we made deliveries and 1911 and in 1912.

Q. Who was it limited you to the twelve thousand tons?

A. It was in conversation and our correspondence. I think that was the specific tonnage we wanted to ship out, and they agreed to its going forward.

538 Q. How could they have refused it?

A. I do not know.

Q. You do not know of any way in which they could have refused it?

A. No.

Q. Except to say to you, "We won't take it?"

A. That is all.

Q. But you evidently thought they might refuse it?

A. I think, as Mr. Reynolds states, that letter is quite specific on that.

Q. I want to know what was on your mind about it. You asked them, for some reason or other, to take a limited amount, and they assented to that limitation. What possible right did they have to limit your shipment, an independent company's shipment?

A. That is a question beyond me.
Q. You did not know of any?
A. No.
Q. And you were simply acquiescent in the situation?
A. Yes.
Q. Which you knew to exist?
A. Yes.
Q. You spoke of a connection to the west other than by the Harrisburg route, did I understand you rightly?
A. Yes.
Q. What was that? 539
A. The Lehigh Valley connection. Do you refer now to the later connection to the West?
Q. Yes.
A. No; that was the Lehigh Valley at Lizard Creek Junction.
Q. Do the figures that you have put in show what proportion of your coal went to the West?
A. All of the coal under, I think it is, practically the last item on the statement shows that.

By Mr. KINGSBURY:

Q. That is all that goes to the West?
A. That is all that went after the opening of that avenue.

By Mr. DRINKER:

Q. What month was that opened in?
A. I do not recall. It was in 1913.
Q. What month in 1913?
A. It was the middle or the latter part of the year. There are no tonnages shown as going out that way. Any tonnage in 1911 and 1912 that went west went as P. and R. local via Tamaqua and is included in these tonnages.

By Mr. KINGSBURY:

Q. Have you any idea what proportion of this tonnage under item 13, P. and R., via Tamaqua, went west?
A. I can not give you that.
Q. Can you give it roughly, approximate percentages?
A. We had a contract in the year 1911 for, say, 150,000 tons. Some 540 of it ran over into 1912, but no shipments were made after the first of April.

By Mr. COUDERT:

Q. Do you remember why?
A. Because price conditions were so exceptional, and getting no return from the service performed by the Panther Creek road.
Q. Getting no lateral allowance for the Panther Creek?
A. Getting no lateral allowance.

Q. After that date?

A. It made it more or less attractive to us, because the tonnages were all moving freely through better paying avenues, so we made no further contract for the movement of coal in that way.

By Mr. KINGSBURY:

Q. In one of the letters which Mr. Reynolds showed you to refresh your memory the following appears: "The Reading stipulate, however, that this coal must be consigned to the care of the Pennsylvania Railroad, Harrisburg, Pennsylvania, and not to the Lehigh Valley Coal Company, Chicago." Do you remember what was the reason for that stipulation, if any?

A. I do not recall what it was. I think that it had something to do with that interstate matter that Mr. Reynolds referred to. That is my recollection.

541 By Mr. COUDERT:

Q. Some lateral allowance that you got one way and did not get the other?

A. We got no lateral allowance, but they stipulated that the coal should go consigned in that way. In other words, the delivery of the coal was complete, so far as we were concerned, when it reached Harrisburg or Milton.

Q. Within the State of Pennsylvania?

A. Yes, sir.

Recross-examination by Mr. REYNOLDS:

Q. Your original request of the Reading was a specific one, to put in tariffs to ship 12,000 tons, was it not?

A. I do not think I asked him to put in the tariff at all. I asked him for the mere shipment of 12,000 tons.

Q. You asked for facilities to ship 12,000 tons?

A. Yes.

Q. The tariff was put in?

A. The tariff was issued to us.

Q. Since then you have shipped whenever you have sold coal in the West?

A. Whenever we wanted to ship in that way and lose the lateral.

Q. In answer to one of Mr. Coudert's questions, you said you had ceased to ship in that way because you had facilities of shipping
542 through better paying avenues?

A. I was referring to a specific time in 1912, when the tonnages were as the result of the approaching strike, we were sending our coals to markets that we did not have to observe laterals, and got a better mine return on our product. Therefore, we shut off that western business, and it was not renewed through that avenue.

Q. Did you not ship via the Lehigh Valley?

A. None at all until late in 1913, when that new connection was opened to us.

Q. The Lehigh Valley divided the rate with the Lehigh and New England, did they not?

A. That I can not pass on. I do not know anything about it.

Q. Then how do you know that you have to observe the lateral in one case and not in the other, if you do not know about it?

A. I should naturally assume that the Lehigh and New England road would not do that business for nothing. That is my assumption.

Q. So you shipped it via the Lehigh and New England and Lehigh Valley on the assumption that the L. and N. E. gets a lateral that way, and you know that the L. and N. E. does not get a lateral via Tamaqua to points outside the State of Pennsylvania; is that right?

A. I assume that is it.

Q. That is the assumption on which you have made the prior statements?

A. Yes, sir. 543

By Mr. COUDERT:

Q. That coal that went to the west over the Philadelphia and Reading via Harrisburg, where does it go now; where do you ship that coal to now?

A. We distribute it through different other avenues.

Q. It does not go to the west at all; it goes to New England and elsewhere?

A. It may. It is part of our total tonnage.

Q. Over what roads does it travel mainly?

A. I don't know the Lehigh Valley connections; I do not know anything after our connection with them.

Q. It goes largely over the Lehigh now?

A. The distribution of our coal through New England and elsewhere is shown, and the tonnage west is building up.

By Mr. REYNOLDS:

Q. Since you have had this western outlet via the Lehigh Valley, have you expanded your western business?

A. We show in the latter part of last year 66,000 tons for the portion of the year when it was a new venture.

Mr. REYNOLDS. At the last session counsel for the Central Railroad Company of New Jersey was asked to state whether the leases of coal facilities on that railroad to coal dealers were generally on the basis of an underlying covenant that the lessee should give preference to the 544
Lehigh and Wilkes-Barre Coal Company, or covenants of that nature, in respect to other shippers on the lines of the railroad.

Counsel for the Central Railroad Company of New Jersey, in response to that question, state that in answer to question No. 16, in I. C. C. docket 4914, we were required to file with the Interstate Commerce Commission copies of all contracts, leases, and agreements with reference to trestle, shed, wharf, dock, scales, coal-stocking plant, coal-storage plant, coal pocket, bin, building and office space (including land as sites for the said properties), owned by the C. R. R. of N. J. and used incident to the transportation, handling, or sale of anthracite coal during the year ended June 30, 1912. In compliance with that request I so filed with the commission all such documents. I have here a collection of the same, totaling fifty-six in number. Of those fifty-six, thirty-nine have no provision whatever as to the routing of coal. Eight have a provision *mutatis mutandis* in the following form, that all coal shipped to or from said demised premises and handled thereon and thereat shall be shipped over the railroad lines of the party of the first part and their connections.

Six have a clause substantially as follows: That all coal and supplies shipped to or from such demised premises, and handled thereat so far as the lessee can control the routing thereof from or to points on or reached via the railroad lines of the lessor, shall be shipped over
545 such lines and their connections whenever the rates charged for such service shall not exceed those charged to others for a generally similar service, and whenever such rates shall not exceed the rates charged by other railroad companies for like transportation between the same points.

There are three slightly variant routing clauses, or the variation is nonessential, and it does not vary sufficient to encumber the record. I hand the three variant ones to the counsel for the Government.

So that the only lease of the entire system that provides for purchase and shipment of Lehigh and Wilkes-Barre coal is the lease to the Burns Brothers. The history of that particular clause I am entirely familiar with through legal proceedings, and I would like to make a statement with respect to that, if counsel are willing.

Just prior to the time the Burns Brothers' lease was made, Burns Brothers purchased several small properties in Jersey City, some of them in fee, and some leasehold interests. Among those purchased were three or four on the property of the Jersey Central, namely, the Communipaw coal pier and pockets, the Manhattan trestle, the Hudson trestle, and the Waddell pocket. After those purchases, Mr. Michael Burns, the president of that company, had a meeting with me to see if he would be able to get the same terms under those
546 leases as the prior tenants had for a future term, and it was agreed that he would have leases renewed upon the same terms, and that explains the reference to the Lehigh and Wilkes-Barre Coal Company in the Communipaw pocket or pier which was leased to the Communi-

paw Coal Company. The history of that lease was that it was originally made in 1882, when the Central Railroad Company of New Jersey was in the hands of a receiver of the Court of Chancery of New Jersey, and I hand the examiner a printed copy of the order permitting the execution of that original lease, bearing date October 1st, 1882. In that lease was this original clause in practically the terms of the present lease, to the effect that they should purchase coal from the Lehigh and Wilkes-Barre Coal Company, giving preference to them on equal terms, and so forth.

During the receivership of the Federal court in 1887 that lease still continued and was approved over and over again in the settlement of accounts by the receivers and by the court. I have voluminous documents supporting that statement here. The intermediate leases simply reiterated that clause. The last lease, which was made in 1900 and expired just before the Burns Brothers' lease was made in 1910, had this clause in it, "and covenants not to receive or handle upon the aforesaid leased premises any coal which has not been transported thereto upon the lines of the said railroad company, the Central Railroad Company of New Jersey, from points north and west of Mauch Chunk," and the affirmative covenant to purchase all coal 547
transported by the railroad company to the said premises from the persons or corporations shipping the same over the lines of the railroad company from points north or west of Mauch Chunk, giving preference, however, on equal terms to coal furnished by the Lehigh and Wilkes-Barre Coal Company.

Under my understanding with Mr. Burns, and his with me, we simply put into the new lease the clause which had come up from 1882 through the various receiverships, and approved by the courts of the State and Federal courts, as a matter of form. That is all there was as to that clause.

Counsel for the Government accept the statement of Mr. Reynolds in regard to the contents of the leases in lieu of the leases themselves, subject to examination and correction.

Printed copy of order in Chancery Court of New Jersey referred to by Mr. Reynolds in his statement is as follows:

In Chancery of New Jersey.

Between
The Lehigh Coal and Navigation Company, Complainants,
and
The Central Railroad Company of New Jersey, Defendants.

Order modifying injunction so as to permit C. R. R. Co. of N. J. to 548
execute contract with the Communipaw Coal Co.

Henry S. Little, president of the Central Railroad Company of New Jersey, having presented to this court the proposed contract

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between said company, and the Communipaw Coal Company, dated October 1, 1882, and having represented that it is, in the opinion of the directors of said company, expedient that the company may be permitted to execute said contract for the purpose of obtaining the increased revenues to be derived from the transportation of coal thereunder, it is on this tenth day of October, 1882,

Ordered, That the injunction now existing against the said company be, and hereby is, so far modified and relaxed as to permit the said company, in the discretion of its board of directors, to execute and perform the same upon its own responsibility and credit.

The permission hereby granted, however, shall not be deemed to impose any additional liabilities upon the receiver, or upon the trust property in his possession, but the said receiver, so long as he shall continue to receive the freight moneys for the transportation of coal under said agreement, shall execute said contract so far as respects the transportation of coal thereunder, furnishing the facilities therein referred to, and paying the accruing interest and principal of said indebtedness, so far and so far only as the net revenues received by
549 him for the transportation of coal thereunder will permit.

(Signed) THEODORE RUNYON.
C.

Counsel for the Government offered in evidence printed **Annual Report of the Central Railroad Company of New Jersey** for the fiscal year ended June 30, 1913.

Also **Annual Report of the Board of Directors of the Lehigh and Wilkes-Barre Coal Company** for the year ended June 30, 1913.

Also the **Sixteenth Annual Report of the Reading Company** for the year ended June 30, 1913, including the reports of the Philadelphia and Reading Coal and Iron Company and the Philadelphia and Reading Railroad Company.

The **Thirty-first Annual Report of the Board of Directors of the Lehigh and Hudson River Railroad Company** for the year ended June 30, 1913.

The **Nineteenth Annual Report of the Board of Directors of the Lehigh and New England Railroad Company** for the year ended June 30, 1913.

The **Ninety-third Annual Report of the Board of Managers of the Lehigh Coal and Navigation Company** for the year ended December 31, 1913.

Counsel for the Government states that they will indicate at the next session portions of these reports they wish spread upon the record.

550 Counsel for the Government offered in evidence statement furnished by the Central Railroad Company of New Jersey, under date February 13, 1904, showing the gross tons of anthracite moved by seagoing tugs and barges for four years ended June 30, 1912, as follows:

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY.

Statement showing gross tons of anthracite moved by sea tugs and barges for four years ended June 30, 1912.

Month & year.	Tons.	Month & year.	Tons.
1908.		1910.	
July	29,085	July	18,840
August	35,024	August	21,595
September	21,725	September	21,726
October	35,425	October	29,507
November	24,128	November	28,877
December	32,145	December	25,132
1909.		1911.	
January	17,868	January	27,461
February	17,683	February	27,098
March	35,315	March	31,349
April	30,204	April	24,112
May	23,565	May	28,126
June	24,170	June	32,353
	326,327		316,176
1909.		1911.	
July	23,448	July	37,939
August	20,810	August	21,434
September	22,139	September	24,249
October	25,972	October	21,682
November	25,379	November	26,113
December	20,100	December	35,074
1910.		1912.	
January	27,209	January	22,270
February	24,710	February	24,956
March	34,990	March	24,381
April	21,216	April	29,825
May	22,396	May	7,783
June	25,787	June	29,665
	297,156		305,371

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SUMMARY.

Year ended June 30—	Gross tons.
1909	326,327
1910	297,156
1911	316,176
1912	305,371
Total	1,245,030
Average per year	311,257

Counsel for Government also offered in evidence statement furnished by counsel for the Lehigh & Wilkes-Barre Coal Company showing routes and delivering lines over which its product reached market or destination during the years 1901 and 1913, as follows: 552

STATEMENT A.

LEHIGH & WILKES-BARRE COAL COMPANY.

Statement showing routes and delivering lines over which its product reached market or destination during the years 1901 and 1913.

Routes.	Tonnage, year 1901.	Tonnage, year 1913.
Sold at mines	122,232	228,991
Lehigh Valley R. R	139,651	367
D. L. & W. R. R	9,979	.....
Erie R. R	18,287	.....

STATEMENT A—Continued.

LEHIGH & WILKES-BARRE COAL COMPANY—Continued.

Statement showing routes and delivering lines over which its product reached market or destination during the years 1901 and 1913—Continued.

	Routes.	Tonnage, year 1901.	Tonnage, year 191
	Central R. R. Co. of N. J.:		
	L. & S. Division	76,283	134,6
	Central Division	293,843	470,9
	Central Division, Newark, N. J.	158,059	186,0
	Central Division, Jersey City for New York City	542,396	568,0
	F. & A. H. Division	9,028	9,4
	N. J. Southern Division	33,231	36,4
	New York & Long Branch R. R	9,508	31,5
	C. R. R. Co. of N. J. supply coal	521,572	823,4
553	C. R. R. of N. J. and Phila. & Reading R. R	426	2,0
	" and D. L. & W. R. R	343	
	" and Lehigh & New England R. R	629	6
	" and L. & H. Ry. (Local)	2,624	3,4
	" L. & H. and West Shore R. R	11,087	
	" L. & H. and C. N. E. R. R	15,134	23,2
	" L. & H. and Erie R. R	91	1
	" L. & H., C. N. E., and N. Y. C. & H. R. R. R	1,029	
	" L. & H., C. N. E., and N. Y. N. H. & H. R	10,847	366,5
	" and Penna. R. R. (Bel. Del.)	100,431	18,1
	" and Penna. R. R. (Oak Island Jct.)	88,020	155,5
	" and Rockaway Valley R. R. (N. J. & Pa. R. R.)	2,133	4,1
	" and Staten Island R. T. Ry	7,951	12,6
	" and Atlantic City R. R	1,663	
	" and Tuckerton R. R	468	4
	" and Rahway Valley R. R	99	10,9
	" and Raritan River R. R		6,0
	" and West Shore R. R. (Local)	9,286	11,2
	" West Shore and N. Y. C. & H. R. R. R		53,3
	" West Shore and B. & M. R. R		62,7
	" West Shore and B. & A. R. R		106,8
	" West Shore, B. & A. R. R., and Rutland R. R		4,0
	" and N. Y., N. H. & H. R. R	46,980	6
554	" and N. Y. C. & H. R. R. R	5,927	26,9
	" and Long Island R. R	85,318	318,5
	" and Floats to Brooklyn	128,516	7,7
	" and Floats to New York City	1,021	
	C. R. R. of N. J. to tidewater for reshipment by water—		
	From Port Johnston and E'port Docks	1,451,794	1,246,5
	From Boston and Salem, Mass	171,416	86,7
	Total	4,077,302	5,018,7

Counsel for Government offered in evidence statement furnished by Lehigh & Wilkes-Barre Coal Company showing routes and markets in which its product was principally disposed of during the year 1901 and the year 1913, together with a letter of explanation by the comptroller of the Lehigh and Wilkes-Barre Coal Company, as follows:

STATEMENT B.

LEHIGH & WILKES-BARRE COAL COMPANY.

Statement showing routes and markets in which its production was principally disposed of during the year 1901 and the year 1913.

	Tonnage, year 1901.	Tonnage, year 1913.
Retailed at mines:		
Audenried, Pa.	3,068	3,721
Wilkes-Barre, Pa.	119,164	225,269
Total.	122,232	228,990
Via Lehigh Valley R. R.:		
Sundry points.	139,651	367
Via D., L. & W. R. R.:		
Sundry points.	9,979	.....
Via Erie and Wyoming Valley Railroad:		
Sundry points.	18,287	.....
To points on C. R. R. of N. J. System.		
L. & S. Division and branches:		
Allentown, Pa.	3,474	5,922
Catasauqua, Pa.	17,994	5,472
Hazard, Pa.	2,165	100,125
Laurel Run, Pa.	5,779	239
Northampton, Pa.	37,946	39
Parryville, Pa.	1,027	13,172
Wilkes-Barre, Pa.	1,653	3,478
Sundry points.	3,245	6,140
Total.	76,283	134,607
Central Division and branches:		
Bound Brook, N. J.	6,640	8,726
Bayonne, N. J.	53,253	62,893
Cranford, N. J.	2,104	1,818
Chrome, N. J.	.....	28,996
Carteret, N. J.	3,386	6,070
Dover, N. J.	4,880	9,988
Elizabeth, N. J.	78,385	103,184
Flemington, N. J.	1,430	3,112
Grasselli, N. J.	.....	66,408
Hampton, N. J.	1,615	3,677
High Bridge, N. J.	3,255	10,555
Jersey City, N. J.	19,475	34,994
Jersey City tide yards, N. J. (for New York City market).	542,396	568,014
Newark, N. J.	158,059	186,025
Plainfield, N. J.	17,846	15,110
Perth Amboy, N. J.	8,351	75,228
Port Oram (Wharton), N. J.	45,186	3,595
Roselle, N. J.	3,029	8,228
Raritan, N. J.	12,121	303
Somerville, N. J.	1,079	5,819
Sewaren, N. J.	6,613	.....
Tremley, N. J.	4,147	.....
Westfield, N. J.	6,631	11,435
Sundry points, N. J.	14,417	10,702
Total.	994,298	1,224,880
F. & A. H. Division and branches:		
Atlantic Highlands, N. J.	5,618	1,929
Keyport, N. J.	968	3,757
Sundry points, N. J.	2,442	3,810
Total.	9,028	9,496
N. J. Southern Division and branches:		
Lakewood, N. J.	16,753	15,372
Long Branch, N. J.	6,248	8,483
Sundry points.	10,230	12,582
Total.	33,231	36,437

	Tonnage, year 1901.	Tonnage, year 1913.
To points on C. R. R. of N. J. System—Continued.		
New York and Long Branch R. R.:		
Asbury Park, N. J.	.....	17,880
Long Branch, N. J.	5,554	4,562
Sundry points.	3,954	9,107
Total.	9,508	31,549
C. R. R. Co. of N. J. supply coal.	521,572	823,894
Via C. R. R. of N. J., Bethlehem, and P. & R. R. R.:		
Sundry points.	426	2,062
Via C. R. R. of N. J., Phillipsburg, N. J., and D. L. & W. R. R.:		
Sundry points.	343	.....
Via C. R. R. of N. J., Bethlehem, Pa., and L. & N. E. R. R.:		
Sundry points.	629	665
Via C. R. R. of N. J., Phillipsburg, N. J., and Lehigh & Hudson Ry. (local):		
Warwick, N. Y.	1,404	2,775
Sundry points.	1,220	658
Total.	2,624	3,433
Via C. R. R. of N. J., P'burg, L. & H. Ry., and West Shore R. R.:		
Newburg, N. Y.	6,036	.....
Sundry points.	5,051	.....
Total.	11,087	.....
Via C. R. R. of N. J., P'burg., L. & H. Ry., and C. N. E. R. R.:		
Poughkeepsie, N. Y.	11,412	9,850
Winsted, Conn.	867	2,529
Sundry points.	2,855	10,836
Total.	15,134	23,215
Via C. R. R. of N. J., P'burg, L. & H. Ry., and Erie R. R.:		
Sundry points.	91	164
Via C. R. R. of N. J., P'burg, L. & H. Ry., C. N. E., and N. Y. C. & H. R.:		
Sundry points.	1,029	.....
Via C. R. R. of N. J., P'burg, L. & H. Ry., C. N. E. and N. Y., N. H. & H.:		
Mount Vernon, N. Y.	.....	13,172
New Rochelle, N. Y.	.....	2,412
Woodlawn, N. Y.	.....	3,386
Bristol, Conn.	1,426	4,874
Danbury, Conn.	.....	3,849
Hartford, Conn.	3,440	11,071
Meriden, Conn.	.....	4,954
New Britain, Conn.	206	4,973
New Canaan, Conn.	.....	4,337
[illegible]ham, Conn.	.....	3,876
[illegible]rington, Conn.	.....	3,925
Wallingford, Conn.	.....	4,269
Waterbury, Conn.	200	8,696

STATEMENT B—Continued.

LEHIGH & WILKES-BARRE COAL COMPANY—Continued.

Statement showing route and markets in which its production was principally disposed of during the year 1901 and the year 1913—Continued.

		Tonnage, year 1901.	Tonnage, year 1913.
	To points on C. R. R. of N. J. System—Continued.		
	Via C. R. R. of N. J. P'burg, L. & H. Rv., C. N. E. and N. Y., N. H. & H.—Contd.		
560	Willimantic, Conn.	.....	3,122
	Olneyville, R. I.	.....	8,025
	Providence, R. I.	.....	3,103
	Woonsocket, R. I.	.....	4,965
	Attleboro, Mass.	.....	5,624
	Campello, Mass.	.....	3,947
	Fairmount, Mass.	.....	4,247
	Franklin, Mass.	.....	2,520
	Boston, Mass.	.....	8,992
	Lenoxdale, Mass.	.....	4,521
	Fitchburg, Mass.	.....	4,280
	Leominster, Mass.	.....	5,211
	Lenox, Mass.	.....	2,791
	Lowell, Mass.	.....	39,335
	Middleboro, Mass.	.....	2,960
	North Easton, Mass.	.....	2,776
	Northampton, Mass.	.....	3,802
	Norwood, Mass.	.....	6,978
	Pittsfield, Mass.	.....	3,635
	Readville, Mass.	.....	10,312
	South Framingham, Mass	.....	2,720
	Springfield, Mass.	.....	18,387
	Westfield, Mass.	.....	7,408
	Wrentham, Mass.	.....	21,375
	Sundry points, Mass.	5,575	110,153
	Total.	10,847	366,536
561	Via C. N. J., Pburg, and Penna. R. R.:		
	Atlantic City, N. J.	.....	3,549
	Camden, N. J.	.....	5,017
	Meadows (P. R. R. supply), N. J.	94,145	.....
	Princeton, N. J.	2,602	545
	Trenton, N. J.	.....	5,943
	Phila., Pa.	2,555	90
	Sundry points, Pa	1,129	2,998
	Total.	100,431	18,142
	Via C. N. J., Oak Island Jct., Penna. R. R.:		
	Jersey City, N. J.	6,680	63,840
	New Brunswick, N. J.	818	8,325
	Newark, N. J.	67,944	54,216
	Meadows (P. R. R. supply), N. J.	.....	20,593
	Rahway, N. J.	9,304	5,478
	Sundry points, N. J.	3,274	3,120
	Total.	88,020	155,572
	Via C. N. J., White House & Rockaway Valley R. R.:		
	Sundry points.	2,133	4,120
	Via C. N. J., Cranford Jct., Staten Island R. T. R. R.:		
	Stapleton, N. Y.	4,714	7,636
	Sundry points.	3,237	5,017
	Total.	7,951	12,653
562	Via C. N. J., Winslow Jct., and Atlantic City R. R.:		
	Sundry points.	1,663	.....
	Via C. N. J., Barnegat, and Tuckerton R. R.:		
	Sundry points.	468	442

		Tonnage, year 1901.	Tonnage, year 1913.
	To points on C. R. R. of N. J. System—Continued.		
	Via C. N. J., Roselle, and Rahway Valley R. R.:		
	Springfield, N. J.	.....	2,832
	Summit, N. J.	.....	7,699
	Sundry points.	99	579
	Total.	99	10,930
	Via C. N. J., South Amboy, and Raritan River R. R.:		
	Sundry points.	.....	6,033
	Via C. N. J. and West Shore R. R. (local):		
	Hoboken, N. J.	6,111	4,032
	Sundry points.	3,175	7,289
	Total.	9,286	11,321
	Via C. N. J., West Shore R. R., and N. Y. C.:		
	Albany, N. Y.	.....	31,516
	Rensselaer, N. Y.	.....	4,208
	Schenectady, N. Y.	.....	3,542
	Ottawa, Canada	.....	4,740
	Sundry points.	.....	9,326
	Total.	.....	53,332
	Via C. N. J., West Shore, and Boston & Maine R. R.:		
	Littleton, N. H.	.....	2,019
	Amherst, Mass.	.....	2,134
	Chicopee, Mass.	.....	3,339
	Chicopee Falls, Mass.	.....	4,961
	Holyoke, Mass.	.....	2,778
	Orange, Mass.	.....	4,004
	Worcester, Mass.	.....	4,266
	Sundry points.	.....	39,256
	Total.	.....	62,757
	Via C. N. J., West Shore and Boston & Albany R. R.:		
	Adams, Mass.	.....	2,074
	Boston, Mass.	.....	12,343
	Dalton, Mass.	.....	2,328
	Hopedale, Mass.	.....	4,137
	Indian Orchard, Mass.	.....	2,068
	Ludlow, Mass.	.....	3,637
	Natick, Mass.	.....	7,176
	North Adams, Mass.	.....	5,062
	North Grafton, Mass.	.....	2,567
	Pittsfield, Mass.	.....	25,833
	Springfield, Mass.	.....	7,105
	Wellesley, Mass.	.....	5,282
	Worcester, Mass.	.....	8,979
	Sundry points.	.....	18,223
	Total.	.....	106,819
	Via C. N. J., West Shore, B. A. & Rutland R. R.: Sundry points.	.....	4,004
	Via C. N. J., J. C. floats, and N. Y. N. H. & H. R. R.:		
	Mount Vernon, N. Y.	8,581	.....
	New Rochelle, N. Y.	11,333	.....
	Woodlawn, N. Y.	2,579	.....
	Danbury, Conn.	1,135	.....
	Hartford, Conn.	1,281	.....
	Meriden, Conn.	2,475	.....
	New Britain, Conn.	3,273	.....
	Waterbury, Conn.	1,148	.....
	Sundry points, Conn.	15,175	600
	Total.	46,980	600

STATEMENT B—Continued.

LEHIGH & WILKES-BARRE COAL COMPANY—Continued.

Statement showing routes and markets in which its production was principally disposed of during the year 1901 and the year 1913—Continued.

	Tonnage, year 1901.	Tonnage, year 1913.
To points on C. R. R. of N. J. System—Continued.		
Via C. N. J., J. C. floats, N. Y. C. & Hudson River R. R.:		
Bedford Hills, N. Y.	.....	3,025
Mt. Kisco, N. Y.	280	2,956
Mt. Vernon, N. Y.	1,371	1,614
Pleasantville, N. Y.	.....	4,856
Sundry points	4,076	14,470
Total	5,927	26,921
Via C. N. J., J. C. floats, and Long Island R. R.:		
Babylon, N. Y.	.....	2,801
Brooklyn, N. Y.	31,358	125,109
Bayshore, N. Y.	1,502	5,134
Corona, N. Y.	1,695	4,274
East Hampton, N. Y.	1,507	2,966
Far Rockaway, N. Y.	1,533	8,398
Hicksville, N. Y.	.....	2,710
Hempstead, N. Y.	3,375	7,293
Islip, N. Y.	1,336	3,440
Jamaica, N. Y.	1,578	20,761
Mineola, N. Y.	.....	3,154
Ozone Park, N. Y.	219	17,170
Patchogue, N. Y.	984	6,545
Port Washington, N. Y.	202	4,933
Queens, N. Y.	316	3,427
Richmond Hill, N. Y.	3,355	6,952
Rockville Center, N. Y.	2,603	8,258
Sag Harbor, N. Y.	1,550	3,891
Sayville, N. Y.	1,974	3,006
Southampton, N. Y.	1,095	3,366
Winfield, N. Y.	692	3,165
Whitestone, N. Y.	.....	2,599
Woodmere, N. Y.	.....	6,589
Westbury, N. Y.	502	3,538
Sundry points	27,737	58,398
Total	83,318	318,417
Via C. N. J., J. C. floats:		
To Brooklyn, N. Y.	128,516	7,707
To New York City, N. Y.	1,021	.....
Via C. R. R. of N. J. to tidewater for reshipment by water from Port Johnston and K'port docks:		
Brooklyn, N. Y.	132,530	328,647
Glen Cove, N. Y.	2,193	.....
New Rochelle, N. Y.	330	5,127
New York City, N. Y.	695,106	446,201
Peekskill, N. Y.	3,573	4,088
Port Chester, N. Y.	.....	3,471
West Chester, N. Y.	.....	10,320
Yonkers, N. Y.	1,092	4,332
Port Richmond, S. I., N. Y.	.....	13,691
Stapleton, S. I., N. Y.	.....	2,883
West Brighton, S. I., N. Y.	.....	6,208
Astoria, L. I., N. Y.	553	5,237
College Point, L. I., N. Y.	1,774	7,151
Flushing, L. I., N. Y.	3,934	15,017
Huntington, L. I., N. Y.	3,286	5,731
Port Jefferson, L. I., N. Y.	2,651	353
Ravenswood, L. I., N. Y.	35,571	20,829
Bangor, Me.	8,756	.....

	Tonnage, year 1901.	Tonnage, year 1913.	
To points on C. R. R. of N. J. System—Continued.			
Via C. R. R. of N. J. to tidewater for reshipment by water from Port Johnston and K'port docks—Cont'd.			
Belfast, Me.	3,527	.....	
Boothbay Harbor, Me.	.....	3,275	
Maine's Point, Me.	3,804	.....	
Portland, Me.	28,815	14,537	
Rockland, Me.	3,938	512	
Narragansett Pier, R. I.	5,218	.....	567
Newport, R. I.	15,345	21,125	567
Pawtucket, R. I.	.....	2,694	
Providence, R. I.	81,866	38,643	
Westerly, R. I.	6,805	5,248	
Dover, N. H.	5,261	.....	
Portsmouth, N. H.	38,766	2,982	
Boston, Mass.	187,282	125,638	
Dorchester, Mass.	.....	2,667	
East Braintree, Mass.	1,495	3,842	
Fall River, Mass.	6,345	5,889	
Gloucester, Mass.	.....	4,388	
Lynn, Mass.	3,617	13,981	
Newburyport, Mass.	21,686	13,340	
New Bedford, Mass.	2,917	2,947	
Quincy (qu), Mass.	.....	11,961	
Salem, Mass.	14,951	.....	
Taunton, Mass.	8,056	1,884	
Worcester, Mass., via Allyns Point, Conn.	3,816	.....	
Bridgeport, Conn.	13,864	616	
Hartford, Conn.	9,318	4,011	
New Haven, Conn.	35,264	4,144	
New London, Conn.	4,826	.....	
Norwalk, Conn.	.....	5,836	568
Norwich, Conn.	9,607	6,616	
Stonington, Conn.	6,373	2,064	
Newark, N. J.	.....	3,203	
Halifax, N. S.	7,718	.....	
Saint Johns, N. B.	19,860	13,930	
Quebec, Canada	17,143	5,563	
Sundry points	81,643	53,841	
Total	1,451,794	1,246,361	
Via C. R. R. of N. J. to tidewater, for reshipment by water via Boston, Mass., and Salem, Mass.:			
Andover, Mass.	2,424	1,564	
Arlington, Mass.	2,348	.....	
Boston, Mass.	31,131	13,261	
Clinton, Mass.	3,037	.....	
Haverhill, Mass.	2,066	.....	
Ipswich, Mass.	.....	2,082	
Lawrence, Mass.	19,095	22,579	
Lowell, Mass.	28,730	.....	
Salem, Mass.	21,094	35,366	
Stoneham, Mass.	3,161	.....	569
Woburn, Mass.	5,488	.....	
Worcester, Mass.	3,168	.....	
Waltham, Mass.	2,005	.....	
Winchester, Mass.	4,629	.....	
Concord, N. H.	3,937	.....	
St. Johnsbury, Vt.	2,582	.....	
Sundry points	36,321	11,523	
Total	171,416	86,375	

(Lehigh and Wilkes-Barre Coal Co., accounting department, Reading Terminal, W. C. Johnson, comptroller. U. S. vs. Reading et al.)

PHILADELPHIA, PA., *February 17, 1914.*

Mr. JACKSON E. REYNOLDS,
General Attorney, Central Building, New York City.

DEAR SIR: Replying to your favor of the 7th in regard to the above case, asking for statements showing the principal routes and points at which this company marketed its coal in typical years in the past.

We have no available information as to markets or points to which our coal was consigned prior to the year 1901. The information as to the routes was not made up in the old days before modern business systems were adopted and the older records have been destroyed long ago. There is no question, however, in my mind from my knowledge of our business, if we had the information it would show that practi-
570 cally the same markets were reached, and with proportionately the same tonnage as that shown where we now have the available records showing the tonnage to such markets.

I enclose herewith Statement A, which shows tons via each route, and Statement B, which shows tons via each route, and the towns to which we shipped in excess of 2,500 tons. I select years 1901 and 1913 as the business was normal in those years, but I can give additional years upon a week's notice, if desired.

Yours, truly,

(Signed) W. C. JOHNSON, Comptroller.

Counsel for Government produced certified copies of tariffs from the Interstate Commerce Commission which were offered in evidence at the last meeting at page 366 and marked **"Exhibits 47 and 48,"** which have been examined by counsel for defendants and found correct. The copies are as follows:

Interstate Commerce Commission, Washington.

I, George B. McGinty, secretary of the Interstate Commerce Commission, do hereby certify that the papers hereto attached (consisting of thirty-eight typewritten sheets), contain true and correct extracts from the schedules therein more particularly described, said schedules having been filed with the said Interstate Commerce Commission on
571 dates specified in said papers, and the said extracts therefrom being still in force on February 2, 1914.

In witness whereof I have hereunto set my hand and affixed the seal of said commission this 6th day of February, A. D. 1914.

(SEAL.) (Signed) GEORGE B. MCGINTY,
Secretary of the Interstate Commerce Commission.

(Extracts from Philadelphia & Reading Railway Co. Joint Coal Tariff No. 257A of 1907, I. C. C. No. A292, filed on September 30, 1907, said extracts being still in force on February 2, 1914.)

(Title page.)

Issued September 30, 1907 Effective November 1, 1907

(Page 4.)

NAMES OF PARTICIPATING LINES AND THEIR CONCURRENCE REFERENCE:

Central Railroad of New Jersey (Fx3—No. 9)

(Pages 9, 10, 11, 12, & 13.)

GEOGRAPHICAL LIST OF STATIONS

TO

NEW YORK DIVISION.

Index No.		
54	New Haven	Conn.
	SHORE LINE DIVISION	
71	New London	Conn.
	HARTFORD DIV.—Con.	
145	Springfield	Mass.
	HIGHLAND DIVISION—Con.	
287	Springfield (Highland Division)	Mass.
	PROVIDENCE DIVISION.	
298	Boston	Mass. 572
	WORCESTER DIVISION.	
355	Providence	R. I.
	PLYMOUTH DIVISION.	
406	Boston	Mass.
	TAUNTON DIVISION—Con.	
573	Fall River	Mass.
579	Newport	R. I.
590	New Bedford	Mass.
	MIDLAND DIVISION.	
597	Boston	Mass.

(Extracts from Supplement No. 11 to Philadelphia & Reading Railway Co. Joint Coal Tariff No. 257 A of 1907, I. C. C. No. A292, filed on May 15, 1913, said extracts being still in force on February 2, 1914.)

(Title page.)

Rates in cents per ton (2240 pounds) on

ANTHRACITE COAL

Carloads

(Subject to minimum weights as provided in Tariff I. C. C. No. A438 or subsequent issues)

FROM PLACES IN

SHAMOKIN, MAHANOY, SCHUYLKILL, LORBERRY, AND LYKENS VALLEY DISTRICTS

(As shown in tariff, I. C. C. No. A 434 or subsequent issues)

TO POINTS ON

NEW YORK, NEW HAVEN & HARTFORD RAILROAD (FX 3—No. 548)
GRAFTON & UPTON RAILROAD (FX 3—No. 512)
MOSHASSUCK VALLEY RAILROAD (FX 3—No. 548)
NEWPORT & WICKFORD RAILROAD (FX 3—No. 25)
RHODE ISLAND COMPANY (FX 3—No. 548)

AND

WOOD RIVER BRANCH RAILROAD (FX 3—No. 548)

Via Allentown, Pa., Central Railroad of New Jersey, Easton, Pa., Lehigh & Hudson River Railway, Maybrook, N. Y., and Central New England Railway.

ISSUED MAY 15, 1913 EFFECTIVE JUNE 16, 1913

(Except as noted in individual items.)

(Page 2.)

NAMES OF PARTICIPATING LINES AND THEIR CONCURRENCE REFERENCE
Central New England Railway (FX 3—No. 310)
Lehigh & Hudson River Railway (FX 3—No. 243)

574 (Extracts from Philadelphia & Reading Railway Co. Joint Coal Tariff No. 302 A of 1909, I. C. C. No. A 340, filed on August 13, 1909, said extracts being still in force on February 2, 1914.)

(Title page.)

ISSUED AUGUST 13, 1909 EFFECTIVE SEPTEMBER 13, 1909

(Page 5.)

GEOGRAPHICAL LIST OF STATIONS
TO

Index No.		
38	Springfield	Mass.
113	Boston	"

575 (Extracts from Supplement No. 3 to Philadelphia & Reading Railway Co. Joint Coal Tariff No. 302 A of 1909, I. C. C. No. A340, filed on October 30, 1912, said extracts being still in force on February 2, 1914.)

(Title page.)

Rates in cents per ton (2240 pounds) on
ANTHRACITE COAL
Carloads
(Subject to minimum weights as provided in Tariff I. C. C. No. A 353 or subsequent issues.)
FROM PLACES IN MAHANOY AND SHAMOKIN DISTRICTS
(As shown in Tariff I. C. C. No. A 434 or subsequent issues.)
TO POINTS ON OR VIA
BOSTON & ALBANY RAILROAD (FX 4—No. 391)
Via Newberry Junction, Pa., New York Central & Hudson River R. R., and West Albany Transfer, N. Y.

ISSUED OCTOBER 30, 1912 EFFECTIVE NOVEMBER 30, 1912
(Except as noted in individual items)

(Page 2.)

PARTICIPATING CARRIERS
New York Central & Hudson River Railroad (FX 4—No. 28).

576 (Extracts from Philadelphia & Reading Railway Co. Joint Coal Tariff No. 324 A of 1911, I. C. C. No. A 366, filed on February 16, 1911, said extracts being still in force on February 2, 1914.)

(Title page.)

Rates in cents per ton (2240 pounds) on
ANTHRACITE COAL
In Full Carloads
(Subject to minimum weights as provided in tariff I. C. C. No. A 353 or subsequent issues.)
FROM COLLIERIES IN SHAMOKIN, MAHANOY, SCHUYLKILL, LORBERRY AND LYKENS VALLEY DISTRICTS
(See Geographical and Alphabetical List of Collieries, I. C. C. No. A 329 or subsequent issues.)
TO POINTS ON
NEW YORK CENTRAL & HUDSON RIVER RAILROAD (FX 4—No. 20)
Via Bound Brook Junction, N. J., C. R. R. of N. J., Jersey City, N. J., Float, and 69th Street, N. Y.

ISSUED FEBRUARY 17, 1911 EFFECTIVE MARCH 20, 1911

(Page 5.)

GEOGRAPHICAL LIST OF STATIONS

TO

HUDSON DIVISION

Main Line

Index No.		
1	New York, 33rd St.	N. Y.
2	130th St.	N. Y.

(Extracts from Philadelphia & Reading Railway Co. Joint Coal Tariff No. 368 A of 1911, I. C. C. No. A 406, filed on November 29, 1911, said extracts being still in force on February 2, 1914.) 577

(Title page.)

Rates in Cents per ton (2240 pounds) on

ANTHRACITE COAL

Carloads

(Subject to minimum weights as provided in Tariff I. C. C. No. A 353 or subsequent issues.)

FROM COLLIERIES IN SHAMOKIN, MAHANOY, SCHUYLKILL, LORBERRY AND LYKENS VALLEY DISTRICTS

(As described in List of Collieries, I. C. C. No. A 329 or subsequent issues)

TO POINTS ON

PHILADELPHIA & READING RAILWAY

IN

PENNSYLVANIA, NEW JERSEY AND DELAWARE

ISSUED NOVEMBER 30, 1911 EFFECTIVE DECEMBER 31, 191.

(Page 6.)

GEOGRAPHICAL LIST OF STATIONS—Continued

TO

PORT READING R. R.

Via Port Reading Junction, N. J.

Index No.		
87	Port Reading (Local Delivery)	N. J.

(Extracts from Philadelphia & Reading Railway Co. Joint Coal Tariff No. 381 A of 1912, I. C. C. No. A 422, filed on May 11, 1912, said extracts being still in force on February 2, 1914.) 578

(Title page.)

Rates in cents per ton (2240 pounds) on

RIVER ANTHRACITE COAL

Carloads

(Subject to minimum weights as provided in Tariff I. C. C. No. A 353 or subsequent issues.)

FROM

SCHUYLKILL HAVEN, LANDINGVILLE, AUBURN, STONY CREEK, PORT CLINTON, HAMBURG, BERN, SHOEMAKERSVILLE AND MOHRSVILLE, PA.

TO

PORT READING, N. J.

(Via Port Reading Junction, N. J.)

FOR TRANS-SHIPMENT TO VESSELS

ISSUED MAY 13, 1912 EFFECTIVE MAY 14, 1912

(Issued under authority of Rule 77, of Interstate Commerce Commission Tariff Circular No. 18–A. No through rates are in effect. The rates from collieries in the Shamokin, Mahanoy, Schuylkill, Lorberry and Lykens Valley Districts (the more distant points) to Port Reading, N. J., for trans-shipment to vessels appear in tariff I. C. C. No. A 414.)

579 (Extracts from Philadelphia & Reading Railway Co. Coal Tariff No. 391 A of 1912, I. C. C. No. A 435, filed on October 4, 1912, said extracts being still in force on February 2, 1914.

(Title page.)

Rates in Cents per ton (2240 pounds) on
River Anthracite Coal
Carloads

(Subject to minimum weights as provided in Tariff I. C. C. No. A 353 or subsequent issues)

FROM

SCHUYLKILL HAVEN, LANDINGVILLE, AUBURN, STONY CREEK, PORT CLINTON, HAMBURG, BERN, SHOEMAKERSVILLE AND MOHRSVILLE, PA.

TO

PORT RICHMOND (Philadelphia), PA.
For Trans-Shipment to Vessels
(Destined to points inside the Capes of the Delaware)

ISSUED OCTOBER 5, 1912 EFFECTIVE OCTOBER 7, 1912

(Issued under authority of Rule 77, of Interstate Commerce Commission Tariff Circular No. 18-A. No through rates are in effect. The rates from collieries in the Shamokin, Mahanoy, Schuylkill, Lorberry and Lykens Valley Districts (the more distant points) to Port Richmond (Philadelphia), Pa., for trans-shipment to vessels (destined to points inside the Capes of the Delaware), appear in Tariff I. C. C. No. A 431.)

580 (Extracts from Philadelphia & Reading Railway Co. Coal Tariff No. 392 A of 1912, I. C. C. No. A 436, filed on October 4, 1912, said extracts being still in force on February 2, 1914.)

(Title page.)

Rates in Cents per ton (2240 pounds) on
River Anthracite Coal
Carloads

(Subject to minimum weights as provided in Tariff I. C. C. No. A 353 or subsequent issues)

FROM

SCHUYLKILL HAVEN, LANDINGVILLE, AUBURN, STONY CREEK, PORT CLINTON, HAMBURG, BERN, SHOEMAKERSVILLE AND MOHRSVILLE, PA.

TO

PORT RICHMOND (Philadelphia), PA.
For Trans-Shipment to Vessels
(Destined to points beyond the Capes of the Delaware)

ISSUED OCTOBER 5, 1912 EFFECTIVE OCTOBER 7, 1912

(Issued under authority of Rule 77, of Interstate Commerce Commission Tariff Circular No. 18-A. No through rates are in effect. The rates from collieries in the Shamokin, Mahanoy, Schuylkill, Lorberry and Lykens Valley Districts (the more distant points) to Port Richmond (Philadelphia), Pa., for trans-shipment to vessels (destined to points beyond the Capes of the Delaware), appear in Tariff I. C. C. No. A 430.)

(Extracts from Philadelphia & Reading Railway Co. Joint Coal Tariff No. 399 A of 1912, I. C. C. No. A 445, filed on December 27, 1912, said extracts being still in force on February 2, 1914.) 581

(Title page.)

Rates in cents per ton (2240 pounds) on
ANTHRACITE COAL
Carloads
(Subject to minimum weights as provided in Tariff I. C. C. No. A 438 or subsequent issues)
FROM PLACES IN
SHAMOKIN, MAHANOY, SCHUYLKILL, LORBERRY AND LYKENS VALLEY DISTRICTS
(As shown in Tariff I. C. C. No. A 434 or subsequent issues)
TO
PORT LIBERTY, N. J.
(Via Bound Brook Junction, N. J.)
FOR TRANS-SHIPMENT TO VESSELS

ISSUED DECEMBER 27, 1912 EFFECTIVE JANUARY 28, 1913

(Extracts from Philadelphia & Reading Railway Co. Coal Tariff No. 414 A of 1913, I. C. C. No. A 470, filed on October 8, 1913, said extracts being still in force on February 2, 1914.) 582

(Title page.)

Rates in cents per ton (2240 pounds) on
ANTHRACITE COAL
Carloads
(Subject to minimum weights as provided in Tariff I. C. C. No. A 438 or subsequent issues)
FROM PLACES IN
SHAMOKIN, MAHANOY, SCHUYLKILL, LORBERRY, AND LYKENS VALLEY DISTRICTS
(As shown in tariff I. C. C. No. A 434 or subsequent issues)
TO
PORT RICHMOND (Philadelphia), PA.
For transshipment to vessels
(Destined to points inside the Capes of the Delaware)

ISSUED OCTOBER 8, 1913 EFFECTIVE NOVEMBER 8, 1913

(Extracts from Philadelphia & Reading Railway Co. Coal Tariff No. 415 A of 1913, I. C. C. No. A 471, filed on October 8, 1913, said extracts being still in force on February 2, 1914.) 583

(Title page.)

Rates in cents per ton (2240 pounds) on
ANTHRACITE COAL
Carloads
(Subject to minimum weights as provided in tariff I. C. C. No. A 438 or subsequent issues)
FROM PLACES IN
SHAMOKIN, MAHANOY, SCHUYLKILL, LORBERRY AND LYKENS VALLEY DISTRICTS
(As shown in tariff I. C. C. No. A 434 or subsequent issues)
TO
PORT RICHMOND (PHILADELPHIA), PA.
For Trans-Shipment to Vessels
(Destined to points beyond the Capes of the Delaware)

ISSUED OCTOBER 8, 1913 EFFECTIVE NOVEMBER 8, 1913

584 (Extracts from Philadelphia & Reading Railway Co. Joint Coal Tariff No. 416 A of 1913, I. C. C. No. A 472, filed on October 8, 1913, said extracts being still in force on February 2, 1914.)

(Title page.)

Rates in cents per ton (2240 pounds) on
ANTHRACITE COAL
Carloads
(Subject to minimum weights as provided in Tariff I. C. C. No. A 438 or subsequent issues)
FROM PLACES IN
SHAMOKIN, MAHANOY, SCHUYLKILL, LORBERRY, AND LYKENS VALLEY DISTRICTS
(As shown in tariff I. C. C. No. A 434 or subsequent issues)
TO
PORT READING, N. J.
For Trans-Shipment to Vessels

ISSUED OCTOBER 8, 1913 EFFECTIVE NOVEMBER 8, 1913

585 (Extracts from Philadelphia & Reading Railway Co. Joint Coal Tariff No. 42 A of 1913, I. C. C. No. A 486, filed on November 21, 1913, said extracts being still in force on February 2, 1914.)

(Title page.)

In Connection With
CENTRAL RAILROAD COMPANY OF NEW JERSEY (FX 3—No. 9)
AND
LEHIGH AND HUDSON RIVER RAILWAY (FX 3—No. 349)
Rates in Cents per ton (2240 pounds) on
ANTHRACITE COAL
Carloads
(Subject to minimum weights as provided in tariff I. C. C. No. A 438 or subsequent issues)
FROM PLACES IN
SHAMOKIN, MAHANOY, SCHUYLKILL, LORBERRY AND LYKENS VALLEY DISTRICTS
(As shown in tariff I. C. C. No. A 434 or subsequent issues)
TO POINTS ON
CENTRAL NEW ENGLAND RAILWAY (FX 3—No. 497)
Via Allentown, Pa., Central Railroad Company of New Jersey, Easton, Pa., Lehigh & Hudson River Railway and Maybrook, N. Y.

ISSUED NOVEMBER 21, 1913 EFFECTIVE DECEMBER 22, 1913

(Page 5.)

GEOGRAPHICAL LIST OF STATIONS
TO
MAIN LINE
SPRINGFIELD BRANCH

Index No.		
10	Springfield	Mass.

586 (Extracts from the Central Railroad Company of New Jersey Joint Freight Tariff I. C. C. A. No. 154, filed on July 24, 1909, said extracts being still in force on February 2, 1914.)

(Title page.)

Joint Freight Tariff on Anthracite Coal, Anthracite Briquettes and Boulets
Rates in Cents per ton of 2,240 pounds in carloads of not less than 15 gross tons
From Collieries, Washeries and Stations located on the
CENTRAL RAILROAD OF NEW JERSEY
TO POINTS ON
CENTRAL NEW ENGLAND RAILWAY
(As shown on pages 3 and 5)

ISSUED NEW YORK, JULY 24, 1909 TAKING EFFECT AUGUST 24, 1909

(Page 5.)

GEOGRAPHICAL LIST OF STATIONS TO WHICH RATES APPLY

TO

MAIN LINE

SPRINGFIELD BRANCH

Index No.

10 Springfield.....Mass.

ROUTE—Via Easton, Pa., Lehigh & Hudson River Ry., Maybrook, N. Y., and Central New England Railway.

(Extracts from Supplement No. 5 to the Central Railroad Company of New Jersey Joint Freight Tariff I. C. C. A. No. 154, filed on January 11, 1912, said extracts being still in force on February 2, 1914.) 587

(Title page.)

In Connection With

CENTRAL NEW ENGLAND RAILWAY CO. (FX3—No. 22, Corr.)

LEHIGH & HUDSON RIVER RAILWAY CO. (FX5—No. 2)

ISSUED NEW YORK JANUARY 11, 1912 EFFECTIVE FEBRUARY 12, 1912

(Except as noted in individual items)

(Extracts from the Central Railroad Company of New Jersey Joint Freight Tariff I. C. C. A. No. 105, filed on August 28, 1909, said extracts being still in force on February 2, 1914.) 588

(Title page.)

Joint Freight Tariff on Anthracite Coal, Anthracite Briquettes and Boulets

Rates in cents per ton of 2,240 pounds in carloads of not less than 15 gross tons

From Collieries, Washeries and Stations located on the

CENTRAL RAILROAD OF NEW JERSEY

TO POINTS ON

CENTRAL NEW ENGLAND RAILWAY

(As shown on pages 3 and 5)

ISSUED NEW YORK, AUGUST 28, 1909 TAKING EFFECT SEPTEMBER 28, 1909

(Page 5.)

GEOGRAPHICAL LIST OF STATIONS TO WHICH RATES APPLY

TO

MAIN LINE

SPRINGFIELD BRANCH

Index No.

10 Springfield.....Mass.

ROUTE—Via Bethlehem Jct., Pa., Lehigh and New England R. R., Campbell Hall, N. Y., and Central New England Railway.

(Extracts from Supplement No. 6 to the Central Railroad Company of New Jersey Joint Freight Tariff I. C. C. A. No. 165, filed on January 22, 1912, said extracts being still in force on February 2, 1914.) 589

(Title page.)

In Connection With

CENTRAL NEW ENGLAND RAILWAY CO. (FX3—No. 22, Corr.)

LEHIGH & NEW ENGLAND RAILROAD CO. (FX4—No. 36)

ISSUED NEW YORK, JANUARY 22, 1912 EFFECTIVE FEBRUARY 16, 1912

(Except as noted in individual Items)

590 (Extracts from the Central Railroad Company of New Jersey Joint Freight Tariff I. C. C. A. No. 198, filed on April 10, 1911, said extracts being still in force on February 2, 1914.)

(Title page.)

Joint Freight Tariff on Anthracite Coal Anthracite Briquettes and Boulets
Rates in cents per ton of 2,240 pounds in carloads of not less than 15 gross tons
From Collieries, Washeries and Stations located on the
CENTRAL RAILROAD OF NEW JERSEY
TO POINTS ON
NEW YORK CENTRAL & HUDSON RIVER R. R.
(as shown on pages 3 and 5)

ISSUED NEW YORK, APRIL 10, 1911 TAKING EFFECT MAY 11, 1911

(Page 5.)

ROUTE:

Via C. R. R. of N. J., Jersey City, N. J., Float, 60th St., N. Y., and New York Central & Hudson River R. R.

591 (Extracts from Supplement No. 2 to the Central Railroad Company of New Jersey Joint Freight Tariff I. C. C. A. No. 198, filed on November 28, 1911, said extracts being still in force on February 2, 1914.)

(Title page.)

In Connection With
NEW YORK CENTRAL & HUDSON RIVER RAILROAD
(Fx 4—No. 26)

ISSUED NEW YORK, NOVEMBER 28, 1911 EFFECTIVE DECEMBER 31, 1911
(Except as noted in individual items)

592 (Extracts from the Central Railroad Company of New Jersey Joint Freight Tariff I. C. C. A. No. 201, filed on May 20, 1911, said extracts being still in force on February 2, 1914.)

(Title page.)

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY
New York & Long Branch Railroad
(FX5—No. 2)
In Connection With
DELAWARE, LACKAWANNA & WESTERN RAILROAD
(FX4—No. 36)
JOINT FREIGHT TARIFF ON ANTHRACITE COAL
Rates in cents per ton of 2,240 pounds, in carloads of not less than 15 gross tons
FROM
TAYLOR, PA.
(Delaware, Lackawanna & Western Railroad Tracks)
TO STATIONS ON
THE CENTRAL RAILROAD COMPANY OF NEW JERSEY
AND
NEW YORK & LONG BRANCH RAILROAD
As shown Herein

ISSUED NEW YORK, MAY 20, 1911 TAKING EFFECT MAY 24, 1911

(Pages 4 and 5.)

Geographical List of Stations to which Rates Apply

TO

N. J. CENTRAL DIV.

Index No.		
40	Elizabethport (Local)	N. J.
48	Communipaw	"
49	Jersey Ave. (Jersey City)	"
50	Jersey City	"

ROUTING

Via Delaware, Lackawanna & Western Railroad, Taylor, Pa., and Central Railroad Company of New Jersey.

(Extracts from the Central Railroad Company of New Jersey Local and Joint Freight Tariff I. C. C. A. No. 211, filed on August 12, 1911, said extracts being still in force on February 2, 1914.) 593

(Title page.)

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY
In Connection With
BUSH TERMINAL RAILROAD COMPANY
(Fx5—No. 1)
LOCAL AND JOINT FREIGHT TARIFF
APPLYING ON
ANTHRACITE COAL, ANTHRACITE BRIQUETTES AND BOULETS.
In Carloads of not less than 15 gross tons
From Collieries Washories and stations Located on the
CENTRAL RAILROAD COMPANY OF NEW JERSEY
To
New York and Brooklyn Terminals, N. Y., Weehawken, N. J., Edgewater, N. J., and New York Harbor.
As shown herein

ISSUED NEW YORK, AUGUST 12, 1911. EFFECTIVE SEPTEMBER 13, 1911

(Page 3.)

ROUTE

Via C. R. R. of N. J. to Jersey City, N. J., thence via car float.

(Extracts from the Central Railroad Company of New Jersey Local and Joint Freight Tariff I. C. C. A. No. 213, filed on October 31, 1911, said extracts being still in force on February 2, 1914.) 594

(Title page.)

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY
New York & Long Branch Railroad
(Fx5—No. 2)
LOCAL AND JOINT FREIGHT TARIFF
Applying on
ANTHRACITE COAL
AND
ANTHRACITE BRIQUETTES AND BOULETS
In Carloads of Not less than 15 Gross Tons
FROM
COLLIERIES, WASHERIES AND STATIONS
ON
THE CENTRAL RAILROAD COMPANY OF NEW JERSEY
TO STATIONS ON
THE CENTRAL RAILROAD COMPANY OF NEW JERSEY
AND
NEW YORK & LONG BRANCH RAILROAD
As shown herein

ISSUED NEW YORK, OCTOBER 30, 1911 EFFECTIVE DECEMBER 1, 1911

(Pages 4, 5, and 6.)

Geographical List of Stations on the Central Railroad Company of New Jersey to which Rates Apply and Rates Applicable Thereto.

Rates in Cents per ton of 2,240 Pounds

TO

NEW JERSEY CENTRAL DIVISION—Con.

Index No.		
	South Branch	
69	Elizabethport (Local)	N. J.
	Newark Branch	
83	Communipaw	N. J.
84	Jersey Ave. (Jersey City)	N. J.
85	Jersey City	N. J.

ROUTING

1 to 98—Via Central Railroad of New Jersey.

595 (Extracts from the Central Railroad Company of New Jersey Joint Freight Tariff I. C. C. A. No. 232, filed on November 29, 1911, said extracts being still in force on February 2, 1914.)

(Title page.)

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY

In Connection With

PENNSYLVANIA RAILROAD CO. (Fx2—No. 78)

JOINT FREIGHT TARIFF

ON

Anthracite Coal, Anthracite Briquettes and Boulets

In Carloads of not less than 15 gross tons

FROM COLLIERIES, WASHERIES AND STATIONS LOCATED ON THE CENTRAL RAILROAD COMPANY OF NEW JERSEY

TO POINTS ON

PENNSYLVANIA RAILROAD CO.

AS SHOWN HEREIN

ISSUED NEW YORK, NOVEMBER 29, 1911 EFFECTIVE DECEMBER 31, 1911

(Page 2.)

Alphabetical List of Stations on the Pennsylvania Railroad to which rates apply and rates applicable thereto.

Rates in Cents per ton of 2,240 pounds

TO

Jersey City ..... N. J.

ROUTING

Via C. R. R. Co. of N. J., Oak Island Jct., N. J., and Pennsylvania R. R.

Extracts from the Central Railroad Company of New Jersey Joint Freight Tariff I. C. C. A. No. 249, filed on June 18, 1912, said extracts being still in force on February 2, 1914.) 596

(Title page.)

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY
In Connection With
CENTRAL NEW ENGLAND RY. (Fx3—No. 22 CORR).
GRAFTON & UPTON R. R. (Fx3—No. 12)
LEHIGH & HUDSON RIVER RY. (Fx5—No. 2)
MOSHASSUCK VALLEY R. R. (FX3—No. 558)
NARRAGANSETT PIER R. R. (FX3—No. 78)
NEW YORK, NEW HAVEN & HARTFORD R. R. CO. (Fx3—No. 558)
WOOD RIVER BRANCH R. R. (Fx3—No. 558)
Joint Freight Tariff
Applying on
Anthracite Coal, Anthracite Briquettes and Boulets
Rates in cents per ton of 2,240 pounds in carloads of not less than 15 gross tons
From Collieries, Washeries and Stations Located on the
CENTRAL RAILROAD COMPANY OF NEW JERSEY
To Points On
New York, New Haven & Hartford Railroad
Grafton and Upton Railroad
Moshassuck Valley R. R., Narragansett Pier Railroad
Wood River Branch Railroad
As shown herein.

ISSUED NEW YORK, JUNE 18, 1912 EFFECTIVE JULY 19, 1912

(Pages 7, 8, 9, 10, and 12.)

GEOGRAPHICAL LIST OF STATIONS TO WHICH RATES APPLY 597
TO

Index No.		
	NEW YORK DIVISION	
1	Harlem River	N. Y.
	SHORE LINE DIVISION	
53	New Haven	Conn.
103	Springfield	Mass.
134	New London	Conn.
	PROVIDENCE DIVISION	
167	Providence	R. I.
	BOSTON DIVISION	
256	Boston	Mass.
	OLD COLONY DIV.—Continued.	
398	Fall River	Mass.
404	Newport	R. I.
453	New Bedford	Mass.
	MIDLAND DIVISION	
	Springfield Branch	
472	Springfield (Midland Division)	Mass.

ROUTE

Via C. R. R. of N. J. to Easton, Pa., Lehigh & Hudson River Railway, Maybrook, N. Y., Central New England Railway, Hopewell Junction, N. Y., and New York, New Haven & Hartford Railroad and Junctions shown.

598 (Extracts from the Central Railroad Co. of New Jersey Joint Freight Tariff I. C. C. A. No. 250, filed on June 18, 1912, said extracts being still in force on Feb. 2, 1914.)

(Title page.)

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY
In Connection With
CENTRAL NEW ENGLAND RY. (FX3—No. 22 CORR)
GRAFTON & UPTON R. R. (FX3—No. 12)
LEHIGH & NEW ENGLAND RAILROAD (FX4—No. 36)
MOSHASSUCK VALLEY R. R. (FX5—No. 558)
NARRAGANSETT PIER R. R. (FX3—No. 78)
NEW YORK, NEW HAVEN & HARTFORD R. R. CO. (FX5—No. 558)
WOOD RIVER BRANCH R. R. (FX5—No. 558)
Joint Freight Tariff
Applying on
ANTHRACITE COAL, ANTHRACITE BRIQUETTES AND BOULETS
Rates in cents per ton of 2,240 pounds in carloads of not less than 15 gross tons
From Collieries, Washeries and Stations Located on the
CENTRAL RAILROAD COMPANY OF NEW JERSEY
To Points On
New York, New Haven & Hartford Railroad
Grafton and Upton Railroad
Moshassuck Valley R. R., Narragansett Pier Railroad
Wood River Branch Railroad
As shown herein

ISSUED NEW YORK, JUNE 18, 1912 EFFECTIVE JULY 19, 1912

(Pages 7, 8, 9, 10, and 12.)

TO

NEW YORK DIVISION

599 Index No.

1 Harlem River.....N. Y.

SHORE LINE DIVISION

53 New Haven.....Conn.
103 Springfield.....Mass.
134 New London.....Conn.

PROVIDENCE DIVISION

167 Providence.....R. I.

BOSTON DIVISION

256 Boston.....Mass.

OLD COLONY DIV.—Continued

398 Fall River.....Mass.
404 Newport.....R. I.
453 New Bedford.....Mass.

MIDLAND DIVISION
Springfield Branch

472 Springfield (Midland Division).....Mass.

ROUTE

Via C. R. R. of N. J. to Bethlehem Jct., Pa., Lehigh & New England Railroad, Campbell Hall, N. Y., Central New England Railway, Hopewell Junction, N. Y., and New York, New Haven & Hartford Railroad and Junctions shown.

(Extracts from the Central Railroad Co. of New Jersey Joint Freight Tariff I. C. C. A. No. 251, filed on July 8, 1912, said extracts being still in force on Feb. 2, 1914.) 600

(Title page.)

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY
In Connection With
BOSTON & MAINE RAILROAD (Fx3—No. 10)
ST. JOHNSBURY & LAKE CHAMPLAIN RAILROAD CO. (Fx3—No. 10)
WEST SHORE RAILROAD (Fx4—No. 26)
NEW YORK CENTRAL & HUDSON RIVER RAILROAD CO. (Fx4—No. 26)
JOINT FREIGHT TARIFF
ON
ANTHRACITE COAL, VIZ.:
Pea, Prepared Sizes and Buck No. 1
and
Anthracite Briquettes and Boulets

Except as otherwise provided for herein, Rates on Buck Nos. 2 and 3, or smaller sizes, will be made on combination of proportional rate to Rotterdam Junction, N. Y., as per Central Railroad Company of New Jersey Tariff I. C. C. A. No. 195, supplements thereto and re-issues thereof, plus rate beyond (local or proportional, as the case may be) lawfully on file with the Interstate Commerce Commission.

In Carloads of Not Less Than 15 Gross Tons
From Collieries, Washeries and Stations Located on
The Central Railroad Company of New Jersey
To Points on the
BOSTON & MAINE RAILROAD
ST. JOHNSBURY & LAKE CHAMPLAIN RAILROAD
As Shown in Tariff

ISSUED NEW YORK, JULY 8, 1912. EFFECTIVE AUGUST 11, 1912 601

(Pages 6, 9, 11, and 13.)

Geographical List of Stations on the Boston & Maine Railroad To which Rates Apply and Rates Applicable Thereto.

STATIONS

Index No.		
	TERMINAL DIVISION	
1	Boston	Mass.
	CONNECTICUT RIVER DIVISION	
308	Springfield	Mass.
	W., N. & P. Division—Continued	
555	Portland	Me.

ROUTING

Via Central Railroad Company of New Jersey to Claremont, N. J., National Docks Railway, Sterling Junction, N. J., West Shore Railroad, Rotterdam Junction, N. Y., and Boston & Maine Railroad,

or

Via Central Railroad Company of New Jersey, Jersey City, N. J., Float to Weehawken, N. J., West Shore Rilroad, Rotterdam Junction, N. Y., and Boston and Maine Railroad.

602 (Extracts from the Central Railroad Company of New Jersey Joint Freight Tariff I. C. C. A. No. 259, filed on June 19, 1913, said extracts being still in force on February 2, 1914.)

(Title page.)

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY
In Connection With
BOSTON & ALBANY RAILROAD (FX4—No. 389)
GRAFTON & UPTON RAILROAD (FX3—No. 12)
NEW YORK CENTRAL & HUDSON RIVER RAILROAD CO. (FX4—No. 26)
WEST SHORE RAILROAD (Fx4—No. 26)
JOINT FREIGHT TARIFF
ON
ANTHRACITE COAL, ANTHRACITE BRIQUETTES AND BOULETS
In Carloads of not less than 15 gross tons
From Collieries, Washeries and Stations located on
THE CENTRAL RAILROAD COMPANY OF NEW JERSEY
To Points On
BOSTON & ALBANY RAILROAD
GRAFTON & UPTON RAILROAD
As shown In Tariff

ISSUED NEW YORK, JUNE 19, 1913 EFFECTIVE JULY 20, 1913

(Pages 4 and 5.)

GEOGRAPHICAL LIST OF STATIONS ON THE BOSTON & ALBANY RAILROAD TO WHICH RATES APPLY AND RATES APPLICABLE THERETO

Index No.	STATION	
	North Adams Branch	
38	Springfield	Mass.
	Milford Branch	
109	Boston	Mass.

(Page 5—Continued.)

ROUTING

603 On shipments destined to Points taking the following Index Nos.	Route Via
1 to 116, inclusive	Via C. R. R. Co. of N. J., Claremont, N. J., National Docks Railway, Sterling Junction (National Junction), N. J., West Shore Railroad, West Albany Transfer, N. Y., and Boston & Albany Railroad, or Via C. R. R. Co. of N. J., Jersey City, N. J., Float, Weehawken, N. J., West Shore Railroad, West Albany Transfer, N. Y., and Boston & Albany Railroad.

604 (Extracts from the Central Railroad Company of New Jersey Local and Proportional Freight Tariff I. C. C. A. No. 263, filed on July 28, 1913, said extracts being still in force on February 2, 1914.)

(Title page.)

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY
Local and Proportional Freight Tariff
ON
ANTHRACITE COAL, ANTHRACITE BRIQUETTES AND BOULETS
In Carloads of Not less than 15 Gross Tons
From Collieries, Washeries and Stations Located on
THE CENTRAL RAILROAD COMPANY OF NEW JERSEY
To Points on The
THE CENTRAL RAILROAD COMPANY OF NEW JERSEY
For Reshipment By Water
As Shown Herein

ISSUED NEW YORK, July 28, 1913 EFFECTIVE SEPTEMBER 12, 1913

(Page 2.)

LIST OF STATIONS TO WHICH RATES APPLY

Anthracite Coal consigned to Piers at points shown below for reshipment, will be transported at following rates, which include shipping charges free on board vessels. Trimming charges will be additional and at rates shown below.

TO

Elizabethport Pier (Elizabethport).....N. J.
Port Johnston..... "
Communipaw Pier (Jersey City)..... "
Port Liberty..... "

(Extracts from the Central Railroad Company of New Jersey Joint and Proportional Freight Tariff I. C. C. A. No. 264, filed on September 4, 1913, said extracts being still in force on February 2, 1914.) 605

(Title page.)

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY
In Connection With
NEW YORK CENTRAL & HUDSON RIVER RAILROAD CO. (Fx4—No. 26)
WEST SHORE RAILROAD (Fx4—No. 26)
CANADIAN PACIFIC RAILWAY CO. (FX3—No. E-301.)
(Lines Fort William, Ont., and East thereof)
JOINT AND PROPORTIONAL FREIGHT TARIFF
Applying on
ANTHRACITE COAL
ANTHRACITE BRIQUETTES AND BOULETS
In Carloads of Not Less than 15 gross tons
From Collieries, Washeries and Stations Located on
THE CENTRAL RAILROAD COMPANY OF NEW JERSEY
To Stations On The
NEW YORK CENTRAL & HUDSON RIVER RAILROAD CO.
WEST SHORE RAILROAD
CANADIAN PACIFIC RAILWAY CO.
As Shown Herein

ISSUED NEW YORK, SEPTEMBER 4, 1913 EFFECTIVE OCTOBER 5, 1913

(Page 5.)

Geographical List of Stations on the West Shore Railroad to which Rates Apply and Rates Applicable Thereto.

Index No.	STATIONS	
	RIVER DIVISION	
1	Jersey City	N. J.
4	Weehawken	N. J.

(Page 6.)

ROUTING

On Traffic destined to Points taking Index Nos.	Route via
1 to 70 inclusive.....	Via C. R. R. Co. of N. J., Claremont, N. J., National Docks Railway, Sterling Junction (National Junction), N. J., and West Shore Railroad,
	or
	Via C. R. R. Co. of N. J., Jersey City, N. J. Float Weehawken, N. J., and West Shore Railroad.

606 (Extracts from the Central Railroad Company of New Jersey Joint Freight Tariff I. C. C. A. No. 137, filed on July 2, 1909, said extracts being still in force on February 2, 1914.)

(Title page.)

In Connection With
PENNSYLVANIA RAILROAD
(Fx2—No. 73)
TUCKERTON RAILROAD, (Fx3—No. 5)
WEST JERSEY & SEASHORE RAILROAD, (Fx2—No. 54)
PHILADELPHIA, BALTIMORE & WASHINGTON RAILROAD, (Fx2—No. 54)
NEW YORK, PHILADELPHIA & NORFOLK RAILROAD, (Fx3—No. 15)
JOINT FREIGHT TARIFF ON ANTHRACITE COAL, ANTHRACITE BRIQUETTES AND BOULETS.

Rates in cents per ton of 2,240 pounds in carloads of not less than 15 gross tons
From Collieries, Washeries and Stations located on the
CENTRAL RAILROAD OF NEW JERSEY
(as shown on page 2)
TO POINTS ON
PENNSYLVANIA RAILROAD, TUCKERTON RAILROAD, WEST JERSEY AND SEASHORE RAILROAD, PHILADELPHIA, BALTIMORE AND WASHINGTON RAILROAD, NEW YORK, PHILADELPHIA AND NORFOLK RAILROAD
(as shown on pages 3 to 7 and 9 to 16)

ISSUED NEW YORK, JULY 2, 1909 TAKING EFFECT AUGUST 2, 1909

(Pages 10, 13, and 14.)

TO

607 Index No. Philadelphia Terminal Division

108	Mantua	Pa.
109	West Philadelphia	Pa.
110	Fifty-second Street	Pa.
111	Broad and Washington Ave	Pa.
112	Wash'ton Ave. Wharf	Pa.

PHILA., BALTIMORE & WASH. R. R.
Philadelphia Terminal Division.

415	Gray's Ferry	Pa.
416	Fifty-eighth Street	Pa.

PHILA., BALTO. & WASH R. R.
(Maryland Division—Continued)

464	Baltimore (Local)	Md.
465	Baltimore (Boston St. Piers—R ipment by water)	Md.
489	Washington	D. C.

(Page 16.)

ROUTE

Via Central Railroad of New Jersey to Phillipsburg, N. J., thence Pennsylvania Railroad to destinations on their system and to Junction Points and connecting railroads shown to points beyond.

(Extracts from Philadelphia & Reading Railway Co. Joint Coal Tariff No. 370 A of 1911, I. C. C. No. A 408, filed on November 29, 1911, said extracts being still in force on February 2, 1914.) 608

(Title page.)

ISSUED NOVEMBER 30, 1911 EFFECTIVE DECEMBER 31, 1911

(Page 6.)

GEOGRAPHICAL LIST OF STATIONS
TO
BALTIMORE & OHIO RAILROAD
Philadelphia Division-Con.
Via Park Jct., Philadelphia, Pa.

Index No.		
20	58th Street (Note 1)	Pa.

(Pages 7 and 8.)

GEOGRAPHICAL LIST OF STATIONS
TO
BALTIMORE DIVISION
Via Park Junction, Philadelphia, Pa.

Index No.		
79	Baltimore	Md.
	Washington Branch-Con.	
128	Washington	D. C.

(Extracts from Supplement No. 2 to Philadelphia & Reading Railway Co. Joint Coal Tariff No. 370 A of 1911, I. C. C. No. A 408, filed on April 30, 1913, said extracts being still in force on February 2, 1914.) 609

(Title page.)

Rates in Cents per ton (2240 Pounds) on
ANTHRACITE COAL
Carloads
(Subject to minimum weights as provided in Tariff I. C. C. No. A 438 or subsequent issues)
FROM PLACES IN
SHAMOKIN, MAHANOY, SCHUYLKILL, LORBERRY AND LYKNES VALLEY DISTRICTS
(As shown in tariff I. C. C. No. A 434 or subsequent issues)
TO POINTS ON
BALTIMORE & OHIO RAILROAD (Fx4—No. 1375)
(East of Ohio River)
CHESAPEAKE BEACH RAILWAY (Fx4—No. 1375)
WASHINGTON SOUTHERN RAILWAY (Fx5—No. 71)
RICHMOND, FREDERICKSBURG & POTOMAC RAILROAD (Fx5—No. 71)
AND
SOUTHERN RAILWAY (Fx3—No. 1011)
Via Birdsboro, Pa., and Elsmere Junction, Del., or Park Junction, Philadelphia, Pa
ISSUED APRIL 30, 1913 EFFECTIVE MAY 31, 1913
(Except as noted in individual items)

(Page 3.)

GEOGRAPHICAL LIST OF STATIONS
TO
PHILADELPHIA DIVISION
Via Park Junction, Philadelphia, Pa.

Note 1.—The rates as published herein to 58th Street will apply to trestles and yards of coal dealers and sidings and industries reached by the Baltimore & Ohio Railroad west of the Schuylkill River within the limits of the City of Philadelphia.

EXHIBIT 48.

610 INTERSTATE COMMERCE COMMISSION,
Washington.

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the papers hereto attached (consisting of nine typewritten sheets) contain true and correct extracts from the schedules therein more particularly described, said schedules having been filed with the said Interstate Commerce Commission on dates specified in said papers; the said extracts therefrom being still in force on February 2, 1914.

In witness whereof I have hereunto set my hand and affixed the seal of said commission this 9th day of February, A. D. 1914.

[SEAL.] (Signed) GEORGE B. McGINTY,
Secretary of the Interstate Commerce Commission.

611 (Extracts from Lehigh & New England Railroad Co. Joint Freight Tariff I. C. C. No. A-2327, filed on August 2, 1912, said extracts being still in force on February 2, 1914.)

(Title page.)

LEHIGH & NEW ENGLAND RAILROAD CO.
IN CONNECTION WITH
CENTRAL NEW ENGLAND RAILWAY, (Fx3—No. 106 corrected.)
JOINT FREIGHT TARIFF
ON
ANTHRACITE COAL
Anthracite Briquettes and Boulets,
In Full Carloads.
MINIMUM WEIGHT 15 Gross Tons.
APPLYING FROM COLLIERIES AND WASHERIES ON
LEHIGH & NEW ENGLAND RAILOAD
as shown in L. & N. E. R. R., I. C. C. No. a-2320, or re-issues thereof,
To Stations On
CENTRAL NEW ENGLAND RAILWAY,
As Shown On Page 5.
Route via Campbell Hall, N. Y., and C. N. E. Ry., as shown on page 5.
ISSUED, JULY 29, 1912 EFFECTIVE AUGUST 7, 1912

(Page 5.)

GEOGRAPHICAL LIST OF STATIONS ON CENTRAL NEW ENGLAND RAILWAY
STATIONS.
MAIN LINE
Springfield Br.

Index No.		
108	Springfield	Mass
	Route via Campbell Hall, N. Y., and Central New England Ry.	

(Extracts from Lehigh & New England Railroad Co. Joint and Proportional Freight Tariff I. C. C. No. 612 A-2344, filed on August 21, 1912, said extracts being still in force on February 2, 1914.)

(Title page.)

LEHIGH & NEW ENGLAND RAILROAD CO.
In Connection With
BOSTON & ALBANY RAILROAD (FX4—No. 410.)
NEW YORK CENTRAL & HUDSON RIVER RAILROAD, (FX4—No.31.)
RUTLAND RAILROAD, (FX3—No. 399.)
WEST SHORE RAILROAD, (FX4—No. 31.)
JOINT AND PROPORTIONAL FREIGHT TARIFF.
ON
Anthracite Coal,
Anthracite Briquettes and Boulets,
In Full Carloads.
Minimum Weight 15 Gross Tons.
Applying from Collieries and Washeries On
LEHIGH & NEW ENGLAND RAILROAD
As shown in L. & N. E. R. R., I. C. C. No. A—2320, * * * , or reissues thereof.
To Stations On
RUTLAND RAILROAD,
As Shown on Page 3.
Route via Campbell Hall, N. Y., W. S. R. R., and as shown on page 3.
ISSUED, AUGUST 19, 1912. EFFECTIVE, AUGUST 28, 1912.

(Page 3.)

GEOGRAPHICAL LIST OF STATIONS ON RUTLAND RAILROAD.

Index No.	STATIONS	STATE:

ROUTING.
Route via Campbell Hall, N. Y., W. S. R. R., N. Y. C. & H. R. R. R., West Albany Transfer, N. Y., B. & A. R. R., Chatham, N. Y., and Rut. R. R.

(Extracts from Lehigh & New England Railroad Co. Joint Freight Tariff I. C. C. No. A-2369, filed on September 10, 1912, said extracts being still in force on September 2, 1914.) 613

(Title page.)

LEHIGH & NEW ENGLAND RAILROAD CO.
In Connection With
BOSTON & ALBANY RAILROAD, (FX4—No. 410.)
GRAFTON & UPTON RAILROAD, (FX3—No. 482.)
NEW YORK CENTRAL & HUDSON RIVER RAILROAD, (FX4—No. 31.)
WEST SHORE RAILROAD, (FX4—No. 31.)
JOINT FREIGHT TARIFF
ON
Anthracite Coal,
Anthracite Briquettes and Boulets,
IN FULL CARLOADS
Minimum Weight 15 Gross Tons
Applying from Collieries and Washeries On
LEHIGH & NEW ENGLAND RAILROAD,
as shown in L. & N. E. R. R., I. C. C. No. A-2320, or re-issues thereof.
To Stations On
BOSTON & ALBANY RAILROAD
AND
GRAFTON & UPTON RAILROAD
As Shown On Pages 5 and 6
Route Via Campbell Hall, N. Y., West Shore R. R., and as shown on page 6
ISSUED SEPTEMBER 10, 1912 EFFECTIVE OCTOBER 14, 1912

(Page 5.)

GEOGRAPHICAL LIST OF STATIONS ON BOSTON & ALBANY RAILROAD

STATIONS

HUDSON & CHATHAM BR.

Via Chatham

Index No.		
39	Springfield	Mass.
115	Boston	Mass.

(Page 6.)

ROUTING

For Points on Boston & Albany Railroad

614 Route Via Campbell Hall, N. Y., W. S. R. R., N. Y. C. & H. R. R. R., West Albany Transfer, N. Y., and B. & A. R. R.

For Points on Grafton & Upton Railroad

Route Via Campbell Hall, N. Y., W. S. R. R., N. Y. C. & H. R. R. R., West Albany Transfer, N. Y., B. & A. R. R., North Grafton, Mass., and C. & U. R. R.

(Pages 8, 10, 12, and 13.)

GEOGRAPHICAL LIST OF STATIONS ON

615 Boston & Maine Railroad and St. Johnsbury & Lake Champlain Railroad

STATIONS

Terminal Div.

Index No.		
1	Boston, Minot St	Mass.
2	Boston, Warren Bridge	Mass.
3	Boston, Rutherford Ave	Mass.

Connecticut River Division.

313	Springfield	Mass.

Worcester, Nashua & Portland Div.—Con.

564	Portland	Me.

ROUTING

Route Via Campbell Hall, N. Y., West Shore Railroad, New York Central & Hudson River Railroad, Rotterdam Junction, N. Y., and Boston & Maine Railroad and connections.

616 (Extracts from Lehigh & New England Railroad Co. Joint Freight Tariff I. C. C. No. A-2399, filed on November 19, 1912, said extracts being still in force on February 2, 1914.)

(Title page.)

LEHIGH & NEW ENGLAND RAILROAD CO.

In Connection With

BOSTON & MAINE RAILROAD, (FX3—No. 25)

NEW YORK CENTRAL & HUDSON RIVER RAILROAD, (FX4—No. 31.)

ST. JOHNSBURY & LAKE CHAMPLAIN RAILROAD, (FX3—No. 25.)

WEST SHORE RAILROAD, (FX4—No. 31.)

JOINT FREIGHT TARIFF

ON

ANTHRACITE COAL,

Anthracite Briquettes and Boulets,

In Full Carloads

Minimum Weight 15 Gross Tons

Applying from Collieries and Washeries on

LEHIGH & NEW ENGLAND RAILROAD,

As Shown in L. & N. E. R. R., I. C. C. No. A—2375 * * *, or reissues Thereof,

To Stations On

BOSTON & MAINE RAILROAD

And

ST. JOHNSBURY & LAKE CHAMPLAIN RAILROAD.

As Shown Within

Route Via Campbell Hall, N. Y., West Shore Railroad and as shown on Page 13

ISSUED NOVEMBER 18, 1912 EFFECTIVE DECEMBER 20, 1912

(Extracts from Lehigh & New England Railroad Co. Joint Freight Tariff I. C. C. No. A-2407, filed on December 7, 1912, said extracts being still in force on February 2, 1914.) 617

(Title page.)

LEHIGH & NEW ENGLAND RAILROAD CO.
In Connection With
CENTRAL NEW ENGLAND RAILROAD, (FX3—No. 106 corrected)
GRAFTON & UPTON RAILROAD, (FX3—No. 482)
MOSHASSUCK VALLEY RAILROAD, (FX3—No. 606)
NEW YORK, NEW HAVEN & HARTFORD RAILROAD, (FX3—No. 606)
RHODE ISLAND COMPANY, (FX3—No. 606)
WOOD RIVER BRANCH RAILROAD, (FX3—No. 606)
JOINT FREIGHT TARIFF
ON
ANTHRACITE COAL,
ANTHRACITE BRIQUETTES AND BOULETS
In Full Carloads, Minimum Weight 15 Gross Tons,
Applying from Collieries and Washeries On
LEHIGH & NEW ENGLAND RAILROAD,
as shown in L. & N. E. R. R., I. C. C. No. A-2375, or re-issues thereof
To Stations On
NEW YORK, NEW HAVEN & HARTFORD RAILROAD,
AND CONNECTIONS
As Shown on Pages 9 to 17 inclusive.
Route Via Campbell Hall, N. Y., C. N. E. Ry., and as shown on page 17
ISSUED, DECEMBER 7, 1912 EFFECTIVE, JANUARY 9, 1913

(Pages 9, 10, 11, 12, 14, and 17.)

GEOGRAPHICAL LIST OF STATIONS ON 618
New York, New Haven & Hartford Railroad and Connections

Index No.	Station	
	SHORE LINE DIVISION	
53	New Haven	Conn.
103	Springfield (Shore Line Div.)	Mass.
134	New London	Conn.
	PROVIDENCE DIV.—Con.	
167	Providence	R. I.
	BOSTON DIVISION	
256	Boston	Mass.
	OLD COLONY DIV.—Con.	
398	Fall River	Mass.
404	Newport	R. I.
453	New Bedford	Mass.
	MIDLAND DIVISION	
	Springfield Branch.	
472	Springfield (Midland Div.)	Mass.

ROUTE.

Route via Campbell Hall, N. Y., Central New England Railway, Hopewell Junction, N. Y., and New York, New Haven & Hartford Railroad and Connections via Junctions shown.

619 (Extracts from Lehigh & New England Railroad Co. Joint Freight Tariff I. C. C. No. A-2455, filed on May 20, 1913, said extracts being still in force on February 2, 1914.)

(Title page.)

LEHIGH & NEW ENGLAND RAILROAD CO.
In Connection With
BOSTON & ALBANY RAILROAD, (FX4—No. 410.)
BOSTON & MAINE RAILROAD, (FX3—No. 25.)
CANADIAN PACIFIC RAILWAY, (FX3—No. 427.)
CENTRAL VERMONT RAILWAY, (FX3—No. 341.)
MONTPELIER & WELLS RIVER RAILROAD, (FX3—No. 145.)
NEW YORK CENTRAL & HUDSON RIVER RAILROAD, (FX4—No. 31.)
RUTLAND RAILROAD, (FX3—No. 399.)
WEST SHORE RAILROAD, (FX4—No. 31.)
WOODSTOCK RAILWAY, (FX3—No. 20.)
JOINT FREIGHT TARIFF
ON
ANTHRACITE COAL,
Anthracite Briquettes and Boulets,
In Full Carloads.
Minimum Weight 15 Gross Tons.
Applying from Collieries and Washeries On
LEHIGH & NEW ENGLAND RAILROAD
as shown in L. & N. E. R. R., I. C. C. No. A-2375, * * *, or reissues thereof.
To Stations On
Canadian Pacific Railway, Montpelier & Wells River Railroad,
Central Vermont Railway, Woodstock Railway,
As Shown Within
Route Via Campbell Hall, N. Y., West Shore Railroad and as shown on Page 6.
ISSUED, MAY 20, 1913 EFFECTIVE, JUNE 21, 1913

620 In connection with these tariffs Government's counsel offer in evidence, subject to correction, a tabulated recapitulation (marked "**Exhibit No. 51**"), as follows:

621 *Philadelphia & Reading tariffs.*

Tariff I. C. C. No.	From (*).	Via R. R.	To Junction.	Via R. R.	Jct.	R. R.
A292	1	P. & R	Allentown	C. R. R. of N. J.	Easton	L. & H. R.
A486	1	do	do	do	do	do
A340	2	do	Newberry Jct	N. Y. C. H. R.	West Albany	B. & A.
A366	1	do	Bound Brook	C. R. R. Co. of N. J.	Jersey City	N. Y. C. H. R. (float).
A406	1	do	Pt. Reading Jct	Pt. Reading R. R.		
A472	1	do	do	do		
A422	3	do	do	do		
A435	3	do				
A470	1	do				
A436	3	do				
A471	1	do				
A445	1	do	Bound Brook Jct			
A408	1	do	Park Jct. (Phila.)	B. & O		

* 1=Shamokin, Mahanoy, Schuylkill, Lorberry, and Lykens Valley districts. 2=Shamokin, Mahanoy 3=(River) Schuylkill Haven, Landingville, Auburn, Stony Creek, Port Clinton, Hamburg, Bern, Sha makersville, and Mohrsville.

Central Railroad Company of New Jersey tariffs.

Tariff I. C. C. No.	From (*).	Via R. R.	To Junction.	R. R.	Jct.	R. R.
A249	4	C. R. R. N. J.	Easton, Pa	L. & H. R	Maybrook	C. N. E
A250	4	do	Bethlehem Jct	L. & N. E	Campbell Hall	C. N. E.*
A251	4	do	Claremont	Nat'l Docks Ry.	Sterling Jct	West Shore
A251	4	do	Jersey City	C. R. R. N. J. float.	Weehawken	do
A259	4	do	do	do	do	do
A259	4	do	Claremont	Nat'l Docks Ry.	Sterling Jct	do
A154	4	do	Easton, Pa	L. & H. R	Maybrook	C. N. E
A165	4	do	Bethlehem Jct	L. & N. E	Campbell Hall	do
A213	4	do				
A201	5	D. L. & W	Taylor	C. R. R. of N. J		
A263	4	C. R. R. N. J.				
A211	4	do	Jersey City			
A198	4	do	do	Floats N. Y. C. H. R. R.		
A232	4	do	Oak Is. Tfr	Penna	Sterling Jct	West Shore
A264	4	do	Claremont	Nat'l Docks Ry.	Weehawken	do
A264	4	do	Jersey City	Float	Phila	P. B. & W
A137	4	do	Phillipsburg	Penna		

* 4=C. R. R. Co of N. J. points. 5=Taylor, Pa., on D/L. & W.

Philadelphia & Reading tariffs—Continued. 621

Jct.	R. R.	Jct.	R. R.	Destination.
ybrook	C. N. E	Hopewell	N. Y. N. H. & H.	New Haven, New London, New Bedford, Fall River, Newport, Providence, Boston, Springfield.
do	do	do		Springfield, Mass.
				Springfield and Boston.
i St. N. Y				New York City (33rd St. and 130th Street).
				Port Reading (local delivery).
				Port Reading (for water transshipment).
				Do.
				Port Richmond (water transshipment inside Capes).
				Do.
				Port Richmond (water transshipment outside Capes).
				Do.
				Port Liberty (for water transshipment).
				Philadelphia, Baltimore, Washington, D. C.

Central Railroad Company of New Jersey tariffs—Continued.

Jct.	P. R.	Jct.	R. R.	Destination.
pewell	N. Y. N. H. & H.			New Haven, New London, New Bedford, Fall River, Newport, Providence, Boston, Springfield, and Harlem River (N. Y.).
do	do			Same.
tterdam Jct	Boston & Me			Boston, Springfield, and Portland, Me.
do	do			Do.
Albany Trf	Bost. & Alby			Do.
do	do			Do.
				Springfield, Mass.
				Do.
				Elizabethport (local), Communipaw, Jersey Ave., Jersey City.
				Do.
				E. Pt. Johnston, Communipaw Pier, Pt. Liberty (water transpt.).
				New York Harbor (Brooklyn, Weehawken, Edgewater).
				New York City (60th Street).
				Jersey City.
				Jersey City, Weehawken.
				Do.
				Philadelphia, Baltimore, Washington, D. C.

621 *Lehigh & New England tariffs.*

Tariff I. C. C. No.	From (*).	Via R. R.	To Junction.	R. R.	Jct.	R. R.
A2407	6	L. & N. E...	Campbell Hall....	C. N. E.....	Hopewell Jct....	N. Y. N. H. & H.
A2399	6	.....do.....	.....do.....	Wt. Sh. N. Y. C. H. R.	Rotterdam Jct..	Boston & Me..
A2369	6	.....do.....	.....do.....	.....do.....	West Albany Tfr	Boston & Al..
A2369	6	.....do.....	.....do.....	.....do.....	.....do.....	.....do.....
A2344	6	.....do.....	.....do.....	.....do.....	.....do.....	.....do.....
A2455	6	.....do.....	.....do.....	.....do.....	.....	.....
A2327	6	.....do.....	.....do.....	C. N. E.....	.....	.....

* 6= L. & N. E. points.

Lehigh & New England tariffs—Continued. 621

Jct.	R. R.	Jct.	R. R.	Destination.
.....	.....	.....	.....	New Haven, New London, New Bedford, Newport, Fall River, Providence, Boston, Springfield.
.....	.....	.....	.....	Boston, Springfield, Portland.
.....	.....	.....	.....	Do.
North Grafton..	Grafton & Upton.	.....	.....	? G. & U. Station ?
Chatam.....	Rutland.....	.....	.....	? Rutland R. R. Stations ?
.....	.....	.....	.....	? B. & A., Can. Pac., Cent. Va., Montpelier & W. R., N. Y. C. H. R., Rutland, West Shore, Woodstock Ry. Stations ?
.....	.....	.....	.....	Springfield, Mass.

622 In regard to **Exhibit No. 4**, being the papers relating to the reorganization of the Philadelphia and Reading Railroad Company, Government's counsel now indicate to the examiner portions to be transcribed in the record, as follows:

READING COMPANY,
READING TERMINAL, TWELFTH AND MARKET STREETS,
Philadelphia, March 24, 1897.

To the committee on stock list, New York Stock Exchange:

The railroads, property, and corporate franchises of the Philadelphia and Reading Railroad Company, and the coal lands and property of the Philadelphia and Reading Coal and Iron Company, included under the general mortgage made by said two companies under date of January 3, 1888, were sold by the Trustees of that mortgage by virtue of their powers and of the decree of the Circuit Court of the United States on the 23d day of September, 1896, to Charles Henry Coster and Francis Lynde Stetson.

On the same day all the other assets and property of the railroad company and the Coal and Iron Company were sold under the same decree by the receivers to the same purchasers.

623 These sales were duly confirmed by the Court, and conveyances and transfers of all the property were duly made and delivered, vesting in the purchasers an absolute title, free and discharged of all the liens and charges, except the prior mortgages and charges and expenses particularly mentioned in said decree.

ORGANIZATION.

A large part of the property so purchased was conveyed by the purchasers to the Reading Company. All of the remainder (with a few unimportant exceptions) was conveyed to the Philadelphia and Reading Railway Company and the Philadelphia and Reading Coal and Iron Company, and the Reading Iron Company.

READING COMPANY.

The Excelsior Enterprise Company was incorporated by an act of assembly of the State of Pennsylvania, approved May 24, 1871. On January 18, 1873, in pursuance of power conferred by the charter, the stockholders changed the name to "National Company"; and on December 7, 1896, in like manner, the name was changed to "Reading Company."

The validity of this charter and its sufficiency for the purposes of this reorganization were considered by the following counsel, viz: Messrs. George F. Baer, J. D. Campbell, Thomas Hart, jr., Francis Lynde Stetson, Victor Morawetz, John G. Johnson, Samuel Dickson, James Boyd, George L. Rives, F. W. Whitridge, Hon. Edward M. Paxson, and Hon. Edward J. Phelps, and a copy of their joint opinion is submitted herewith. Said opinion concludes as follows:

624 "In our opinion, the Reading Company can legally acquire, receive and hold, and can mortgage and pledge, all the stocks, securities, and properties, including the capital stocks of the new rail*way* company and of the coal and iron company; and it can keep and perform all

the covenants and conditions under which, severally and respectively, these two companies acquired their properties from the purchasers. By a further increase of its capital,[a] the Reading Company can legally issue the common and preferred stock, and the bonds required by the plan of reorganization; and, to secure the payment of these bonds, it can lawfully pledge and mortgage the stock, securities, and properties by it so acquired."

The attorney general of the State of Pennsylvania having subsequently questioned the validity of the charter and having instructed the State officials not to accept certain franchise moneys, the facts of the case were laid before him, and his opinion is also submitted. While questioning certain powers which it is not intended to use, he says:

"After due consideration, I reach the conclusion, most reluctantly, that the Commonwealth of Pennsylvania can not now successfully attack the chartered rights of the Reading Company; at least, the rights of such a nature and character as had been exercised by the 625
corporation prior to January 1, 1874. It had power to do the business in which it was engaged prior to the adoption of the new constitution.

* * * * * * *

"My view of the whole matter is that the charter of the company authorized it to do the kind of business in which it engaged prior to January 1, 1874, which business was of the same general character as that in which it proposes to engage for the purpose of controlling the stocks of the Railway Company and the Coal and Iron Company."

The capital stock of the Reading Company consists of 2,800,000 shares of $50 each ($140,000,000), of which 560,000 shares ($28,000,000) are first preferred, noncumulative 4 per cent; 840,000 shares ($42,000,000) are second preferred, noncumulative 4 per cent; 1,400,000 shares ($70,000,000) are common; all of which (except the original issue of 1,000 shares for cash), as well as bonds as hereinafter stated, have been issued for property acquired. The recipients of said stock have deposited same (except 2,000 shares of common stock) with Messrs. J. Pierpont Morgan and Frederic P. Olcott, of New York, and Henry N. Paul, of Philadelphia, as voting trustees, under an agreement which provides that it shall be held by them 626
until January 1, 1902, and for such further period (if any) as shall elapse before the first preferred stock shall have received 4 per cent per annum cash dividend for two consecutive years, although the voting trustees may, in their discretion, deliver the stock at any earlier date. Until delivery of stock is made by the voting trustees they shall issue certificates of beneficial interest entitling the registered holders to receive, at the time therein provided, stock certificates for the number of shares therein stated, and in the meanwhile to receive payments equal to the dividends collected by the voting trustees upon the number of shares therein stated, which shares, however, with the voting power thereon, are vested in the voting trustees until the stock shall become deliverable, as provided in such certificates of the voting trustees.

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[a] This increase has been duly made.

The stock certificates provide, in substance, that no additional mortgage shall be put upon the property acquired under the plan of reorganization, nor shall the amount of the first preferred stock authorized under said plan be increased, except with the consent, in each instance, of the holders of a majority of the whole amount of each class of preferred stock, given at a meeting of the stockholders called for that purpose, and with the consent of the holders
627 of a majority of such part of the common stock as shall be represented at such meeting, the holders of each class of stock voting separately; also that the amount of the second preferred stock shall not be increased except with like consent by the holders of a majority thereof, and a majority of such part of the common stock as shall be represented at the meeting; except that at any time after dividends at the rate of 4 per cent per annum shall have been paid for two consecutive years on the first preferred stock, the company may convert the second preferred stock at par, one-half into first preferred stock and one-half into common stock, and may increase said classes of stock by the necessary amounts. During the existence of the voting trust the consent of holders of like amounts of the respective classes of beneficial certificates is also necessary for any increase of stock other than for the purpose indicated.

The Reading Company reserves the right to redeem at any time either or both classes of its preferred stock at par in cash, if allowed by law.

The Reading Company owns and has pledged for its mortgage hereinafter mentioned:

A—Railway equipment valued at		$16,950,000.00
Real estate of railroad company (this does not include rights of way, depots, &c., or any real estate appurtenant to the railroads) valued at		16,000,000.00
628 Colliers and barges valued at		1,450,000.00
		34,400,000.00

The details of the equipment are as follows:

	Number.	Value.	
Railroad locomotives	791	$3,874,339.80	
Railroad cars	29,625	13,110,666.39	
Marine boats	118	1,439,850.00	
Canal boats	50	19,700.00	
			18,444,556.19

(The old mortgages of the Philadelphia and Reading Railroad Company attach to most of this property.)

B—Stocks and bonds:	
Stock of Philadelphia and Reading Railway Company, at par	20,000,000.00
Bond of Philadelphia and Reading Railway Company, at par	20,000,000.00
Stock of the Philadelphia and Reading Coal and Iron Co., at par	8,000,000.00
Stock of Reading Iron Company, at par	1,000,000.00
Other stocks and bonds (as per schedules annexed) which control about 275 miles of railroad, at par	38,488,246.00
	87,448,246.00
629 C—Mortgages and ground rents, at par	a 266,594.16

D—Philadelphia and Reading Coal and Iron Co.:		
Assets as shown by its books		$95, 435, 453. 79
Less bonds, &c	$17, 874, 606. 46	
Less current liabilities	1, 406, 168. 34	
Less stock of P. & R. C. and I. Co. included in "stocks and bonds"	8, 000, 000. 00	
		27, 280, 774. 80
		68, 154, 678. 99
E Claims against other companies (see schedule annexed)		3, 343, 382. 87
F—Other stocks and bonds:		
Schuylkill Navigation Company [a] preferred and common stock		3, 941, 800. 00
Susquehanna Canal Co.[a] bonds and stock		3, 848. 160. 94
		7, 789, 960. 94
Valued at		1, 000 00
Estimated worth ("A" being subject to undisturbed bonds as stated further on)		193. 613, 902. 02

It will be observed that among the principal assets of the Reading Company is its ownership in the securities of the Philadelphia and Reading Railway Company and the Philadelphia and Reading Coal and Iron Company. By means of the former, the practical ownership of the railway company is vested in the Reading Company. The 630
mortgage securing the bond of the railway company provides for additional bonds up to $10,000,000, which, together with like amounts of capital stock, may be issued from time to time to the Reading Company in order to enable the latter to deposit same under its mortgage and obtain the issue of a like amount of the reserved bonds thereunder, when and as the Reading Company advances money for new construction, &c., upon the lines of the railway company and of certain of the companies leased or controlled by it. In this way the lien of the Reading Company's mortgage on the property of the railway company is constantly preserved and strengthened. The railway company's mortgage is stringent in its provisions and allows the issue of the $10,000,000 bonds only in a manner and for purposes which are consistent with the provisions of the Reading Company mortgage.

PHILADELPHIA AND READING RAILWAY COMPANY.

In pursuance of the acts of Assembly of the State of Pennsylvania of May 31, 1887, the before-mentioned purchasers of the rail ad property organized a new corporation under the name of "Philadelphia and Reading Railway Company," and conveyed to it certain railroads and properties acquired by them at the foreclosure sale, in consideration, among other things, of the issue of the entire capital stock ($20,000,000) and of $20,000,000 bonds secured by mortgage. 631

It owns railroad (but no equipment) of an aggregate length of	390. 99 miles.
Of which about 180 miles are double-tracked.	
It has acquired leases of	597. 00 miles.
Of which about 186 miles are double-tracked.	
It leases from Reading Company:	
Equipment, $16,950,000 at 8 per cent (and taxes)	
Colliers and barges, $1,450,000 at 8 per cent (and taxes)	
Delaware River wharves at $50,000 per annum	

[a] These are not under the mortgage of Reading Co. and Coal and Iron Co.

There are undisturbed bonds of the P. & R. R. R. Co. on the property of the railway company, as follows:

	Principal.	Interest.
Prior mortgage loans	$5,241,700.00	$286,357.00
Consolidated mortgage loans	18,811,000.00	1,235,150.00
Improvement mortgage loans, at 4 per cent	9,364,000.00	374,560.00
Consol. mortgage of 1882, 1st series, at 4 per cent	5,767,042.00	230,682.00
Consol. mortgage of 1883, 2d series	1,535.00	.....
Terminal loan, at 5 per cent	8,500,000.00	425,000.00
Bonds and mortgages on real estate	844,871.35	41,439.00
	48,530,148.35	2,593,188.00
The company is also liable for subway bonds of the city of Philadelphia (ultimately to be increased to $3,000,000), at 3½ per cent	300,000.00	10,460.00

THE PHILADELPHIA AND READING COAL AND IRON COMPANY.

The decree of confirmation and the conveyances above referred to expressly excepted and released the corporate franchises of the Philadelphia and Reading Coal and Iron Company, so that these corporate
632 rights and powers have been preserved to it; and the purchasers conveyed to that company the principal part of its former property upon condition and in consideration, among other things, that the coal and iron company should become co-obligor in the bonds to be created and issued by the "Reading Company" under the plan of reorganization, and to secure such bonds should make and execute a mortgage on all its properties and franchises.

THE PHILADELPHIA AND READING COAL AND IRON COMPANY.

A—Owns:		
Coal lands	95,144 acres.	
Valued on the books at		$76,294,997.80
B—Leases:		
Coal lands	7,429 acres.	
C—Also owns:		
Timber lands		659,965.00
Eastern depots		710,724.34
Western depots		657,709.35
Coal on hand and other current assets		7,414,232.30
		9,442,630.99
Stocks of separate coal companies, viz:		
The Preston Coal and Improvement Co.		2,834,150.00
The Fulton Coal Company		317,685.00
The Locust Gap Improvement Co.		525,220.00
The Tremont Coal Company		2,958,850.00
Nearly all of these stocks are subject to the consolidated mortgage of 1871–1911.		
633 The Mammoth Vein Coal and Iron Company	$604,270.00	
The Delaware Coal Company	261,650.00	
These are covered by new mortgage. See Schedule A.		
		7,501,825.00

C—Also owns Continued.		
Bonds of separate coal companies:		
Preston Coal and Improvement, 7 per cent mortgage bonds	$1,087,000	
Tremont Coal Co., 6 per cent mortgage bonds	900,000	
Mammoth Vein Coal and Iron Co., 8 per cent mortgage bonds	209,000	
These are collateral for sinking fund loan of $1,774,000; also covered by new mortgage. See Schedule A		$2,196,000.00
		95,435,453.79
D—It owes for bonds matured and maturing		12,050,606.40
For which bonds of the new general mortgage are to be substituted.		
E—It assumes coll. sinking fund loan of 1892 of R. R. Co.		1,774,000.00
F—It owes coal trust certificates ($4,300,000—$250,000)		4,050,000.00
G—Current liabilities		1,406,168.34
		19,280,774.80

EARNINGS AND FIXED CHARGES. 634

Stated in detail, on completion of reorganization the results of the three companies will show as follows:

READING COMPANY.

Estimate of fixed charges of Reading Company:		
Railroad company mortgages on real estate	$2,276,491.65	$110,000.00
New bonds	50,369,054.00	2,014,762.00
		2,124,762.00
Taxes, etc., say		200,000.00
		2,324,762.00
Estimate of income of Reading Company (based on 1896 results):		
From railway company for rental of equipment, colliers, etc	$1,472,000.00	
From railway company for rental of Delaware wharves	50,000.00	
From railway company interest ($20,000,000)	1,200,000.00	
From securities	781,023.00	
From real estate (formerly of railroad company)	125,000.00	
		3,628,023.00
Surplus		1,303,261.00

RAILWAY COMPANY. 635

Interest on undisturbed bonds, etc	$2,603,648.00
Interest on $20,000,000 bond held by Reading Company	1,200,000.00
Rentals (railroads), say	3,100,000.00
Rentals (equipment, colliers and wharves) as above, say	1,522,000.00
Taxes	175,000.00
Sundries	75,000.00
Total fixed charges of railway company, say	8,675,648.00
Property now controlled by railway company earned, net, in year ending November 30, 1896	8,805,807.00
Surplus	130,159.00

COAL AND IRON CO.

Interest on—	
$12,050,000 new general mortgage 4s to replace outstanding div. coal land bonds and mortgages	$482,000.00
Coal trust certificates, $4,050,000, at 6 per cent	243,000.00
Coal trust commission	50,000.00
	775,000.00
Interest on collateral sinking fund loan, $1,774,000, at 5 per cent	88,700.00
Total	863,700.00
Net earnings, year ending November 30, 1896	238,344.00
Deficit	625,356.00

636 *Earnings of all companies in year ending November 30, 1896.*

(After paying all fixed charges as they will stand on completion of plan.)

	Deficit.	Surplus.
Railway company		$130,159.00
Coal and iron company	$625,356.00	
Reading company		1,303,261.00
Surplus, all companies (to balance)	808,064.00	
	1,433,420.00	1,433,420.00

Stated in the simpler form, which was adopted in the plan of reorganization, and eliminating all accounts between the three companies:

Net earnings of entire property (including income from all sources) in year ending November 30, 1896, were	$9,480,736
Fixed charges of entire property on completion of reorganization will be..	8,672,672
For the present year, pending completion of refunding schemes, etc., they will be perhaps $300,000 or $400,000 more	
Referring to the plan of reorganization, dated December 14, 1895, it will be noticed on page 10 thereof that the fixed charges after reorganization are stated at about	9,300,000
Add for subway so far accrued	10,460
	9,310,460
637 The plan further states that by refunding of high-rate bonds, &c., these charges will be reduced by about	500,000
Making	8,810,460

the ultimate fixed charge under the plan. Under the plan as actually carried out they will not be over $8,672,672.

The accounts of all the companies, as reorganized, have started from November 1, 1896. Eliminating all accounts between the three companies, the results since then are substantially the same as for the corresponding period of last year.

MORTGAGE.

Under date of January 5, 1897, the Reading Company and the Philadelphia and Reading Coal and Iron Company executed a joint mortgage to the Central Trust Company of New York, as trustee, to secure their joint and several bonds, issued and to be issued up to a total of $135,000,000, to be used as follows:

A—To provide for:

Bonds of the Philadelphia and Reading Railroad Company now outstanding, aggregating	[a] $49,459,277
Delaware River terminal bonds and Delaware River Terminal extension bonds	1,509,000
Ground rents and bonds of the Philadelphia and Reading Railroad Company secured by mortgage on real estate	[b] 1,612,063
Bonds of the Philadelphia and Reading Coal and Iron Company, generally known as divisional bonds	2,050 606
	64,630,946
Or, say	64,631,000

B—To be used hereafter:

(*a*) For the acquisition of additional shares of stock, if issued by the Philadelphia and Reading Railway Company, and of additional bonds of said company to be issued under its mortgage, dated November 18, 1896, such stock and bonds to be pledged under the Reading Company's mortgage.

(*b*) For the construction or acquisition, on and after January 1, 1897, of railway lines, extensions, terminal properties, or rolling stock, or for the construction or acquisition of other property on or after that date; or for the construction of betterments, on or after that date; all such construction, or betterments, or property acquired, to be upon, along, or appurtenant to the properties * * * subject to the lien of this indenture * * * or upon, along, or appurtenant to lines of railway or terminal properties of some one or more * * * companies * * * of whose capital stock more than one-half, at the time of such use, shall be pledged under said mortgage, * * * or for the acquisition on or after January 1, 1897, of shares, bonds, or other obligations of any company owning any such line, extension, terminal property, rolling stock, or other property. 639

Not over $1,500,000 bonds to be used in any one calendar year	20,000,000
(*c*) To be issued now as part consideration for property conveyed pursuant to plan of reorganization	50,369,000
	135,000,000

The mortgage contains stringent provisions regulating the use of the new bonds, of the same general character as those in the Southern Railway Company, Erie Railroad Company, and Northern Pacific Railway Company mortgages—with such changes, of course, as are necessary for the requirements of this particular case.

Excepting the mortgages and ground rents, of an aggregate value of $266,594.16, and the canal securities, valued at $1,000, the mortgage covers all the property, including stocks and bonds (excepting such few shares of stock as qualify directors, etc.), owned by the Reading Company, as hereinbefore described, and all the property of the Coal and Iron Company; also, all property hereafter acquired by use of the $20,000,000 reserved bonds.

For a better understanding of the matter it may be stated in general terms that, either by way of direct mortgage or collateral trust, the new mortgage has the security of substantially all of the property formerly of the Philadelphia and Reading Railroad Company, and of the Philadelphia and Reading Coal and Iron Company, as acquired under the court's decree above mentioned, subject to 640

[a] This includes $1,774,000 coll. S. F. bonds of Railroad Co. assumed by Coal and Iron Co.
[b] Of which $767,491.65 are on property owned by Reading Co., $844,571.35 are on property owned by Railway Company.

$64,630,946 of outstanding bonds, which constitute prior liens on parts thereof, and of which $12,050,606 are now being paid off, so that the prior liens will shortly be reduced to about $52,500,000. In addition to thus reducing the prior liens, the new mortgage also covers a vast amount of property of large present earning capacity, which was not included in the former general mortgage; as, for instance, the stocks and bonds which were under the former collateral trust (now paid off) and which yield a present annual income of fully $500,000; also equipment costing about $10,000,000, most of which was formerly under car trusts, etc.

The bonds issued and to be issued under said mortgage are payable, principal and interest, at the office or agency of the Reading Company in the city of New York, in gold coin of the United States of the present standard of weight and fineness, without deduction for any tax or taxes of the United States or any State or municipality thereof which the companies, or either of them, may be required to pay or to retain therefrom under any present or future law. The
641 principal is due January 1, 1997, and the interest July first and January first in each year, at four per cent. per annum. The bonds are in coupon form of $1,000 each, with right of registration of principal and with right of conversion into registered bonds of $500, $1,000, $5,000, and $10,000. Such registry and conversion may be made at the office of Messrs. J. P. Morgan & Co., in New York.

The mortgage provides that the Reading Company shall not and will not in any year declare or pay dividends upon its stock, either common or preferred, * * * unless prior to, or simultaneously with, such declaration it shall deliver to the trustee a statement in writing under its corporate seal showing the amount of anthracite coal mined from lands owned by the coal company and mortgaged hereunder during the year next preceding the declaration of such dividend, and simultaneously shall pay to the trustee a sum equal to five cents per ton on all coal so mined in the preceding year if the aggregate of dividends so declared shall be equal to or shall exceed such sum, and otherwise such lesser sum as shall be equal to the aggregate of dividends so declared.

All sums so received by the trustee shall * * * be applied in purchasing bonds secured by the mortgage in such manner as to it shall seem best and at such prices as it shall deem best, but not exceeding par and accrued interest * * * or with the approval
642 of the Reading Company at higher prices than those above fixed; or such unapplied balance shall be invested in securities in which savings banks at such time shall be authorized under the laws of New York to invest their funds, such securities to be held by the trustee as a part of the trust estate * * *.

All bonds secured by the mortgage, when so purchased by the trustee, shall be canceled.

There are submitted herewith:

Copy of mortgage, with usual certificates.

Copy of stock certificates.

Copy of voting-trust agreement.

Schedule of stocks and bonds owned.

Schedule of equipment.

Schedule of claims against other companies.

Balance sheets of the three companies December 1, 1896.

Opinion of 12 counsel as to Reading Company's charter and powers.
Opinion of attorney general of Pennsylvania as to same.
Opinion of counsel as to new stocks and bonds.
Engineers' certificates.
Specimens of bonds, stock-trust certificates, and discharge warrants.

Application is hereby made for the listing of $62,419,000 bonds of the Reading Company and of the Philadelphia and Reading Coal and Iron Company, being coupon bonds Nos. 1 to 62,419, inclusive, of $1,000 each, issued under their joint mortgage of January 5, 1897, and of the registered bonds into which same may be converted. 643

The bonds for which a quotation is now desired are those issuable at once, as stated above, viz, $50,369,000, and those which are now being used for the retirement and cancellation of the coal and iron company bonds generally known as divisional bonds, viz, $12,050,606.

Of the $50,369,000 bonds about $45,000,000 represent the old general-mortgage bonds deposited under the plan, and the remainder are sold for cash or used for other purposes of the reorganization pursuant to the plan.

EXCHANGE OF SECURITIES.

The basis of exchange of the old securities, or new securities pursuant to the before-mentioned plan of reorganization, is as follows:

644

Old securities.	Receive— New general-mortgage bonds.	First preferred stock-trust certificates.	Second preferred stock-trust certificates.	Common stock-trust certificates.
	Per cent.	*Per cent.*	*Per cent.*	*Per cent.*
General-mortgage bonds (in addition to all back interest in cash)	100	.....	.....	.....
First preference income bonds (20 per cent assessment paid)	.....	30	100	.....
Second preference income bonds (20 per cent assessment paid)	.....	.....	65	55
Third preference income bonds (20 per cent assessment paid)	.....	.....	35	85
Stock (20 per cent assessment paid)	.....	.....	.....	100
Deferred income bonds (4 per cent assessment paid)	.....	.....	.....	20

OFFICERS AND DIRECTORS.

The directors of the Reading Company are as follows: Joseph S. Harris, A. J. Antelo, Thomas McKean, Chas. H. Coster, Francis Lynde Stetson, Geo. F. Baer, John Lowber Welsh, Albert Foster, George C. Thomas. Officers: President, Joseph S. Harris; vice president, W. R. Taylor; treasurer, W. A. Church; secretary, W. G. Brown.

The directors of the Philadelphia and Reading Coal and Iron Company are as follows: C. Tower, jr., Chas. H. Coster, Thomas McKean, John Lowber Welsh, George F. Baer, George C. Thomas. Officers: President, Joseph S. Harris; vice president, W. R. Taylor; treasurer, W. A. Church; secretary, F. P. Kaercher; assistant secretaries, H. C. Russell and W. G. Brown; general manager, C. E. Henderson; general coal agent, Thos. M. Richards; general superintendent, R. C. Luther. 645

The directors of the Philadelphia and Reading Railway Company are as follows: Chas. H. Coster, Francis Lynde Stetson, John Lowber

Welsh, George F. Baer, George C. Thomas, Thomas McKean. Officers: President, Joseph S. Harris; first vice president, Theodore Voorhees; second vice president, C. E. Henderson; treasurer, W. A. Church; secretary, W. R. Taylor.

READING COMPANY,
By JOS. S. HARRIS, *President.*
THE PHILADELPHIA AND READING
COAL AND IRON COMPANY,
By JOS. S. HARRIS, *President.*

Also pages 20 to 23, inclusive, being the opinion of the Pennsylvania attorney general, as follows:

646 *Opinion of Attorney General of Pennsylvania.*

OFFICE OF ATTORNEY GENERAL,
Harrisburg, Pa., January 2, 1897.

READING COMPANY.

This corporation was created by act of the General Assembly of Pennsylvania, approved May 24, 1871, under the name of "Excelsior Enterprise Company."

By said act of assembly it was vested with all the rights, powers, privileges, franchises, and immunities conferred by an act of assembly entitled "An act to Incorporate the Pennsylvania Company," approved the 7th of April, 1870, and the supplements to said act. It was also given power by vote of the stockholders to change the name of the company and to designate the location of its general office, and such changes were made valid after the filing of a certificate in the office of the secretary of the Commonwealth, signed by the president and secretary and attested by the seal of the said company.

On May 25, 1871, it paid to the Commonwealth the first installment of bonus on its capital stock. On January 18, 1873, as appears by certificate filed in the office of the secretary of the Commonwealth, March 31, 1873, the name of the company was changed from the Excelsior Enterprise Company to the National Company, and its general
647 office was located in Philadelphia.

This department has also been advised, by transcripts of proceedings had in one of the courts of Philadelphia, that the name of the National Company has been duly changed to the Reading Company.

Pending the foreclosure proceedings under the general mortgage made by the Philadelphia and Reading Railroad Company and the Philadelphia and Reading Coal and Iron Company, it came to the notice of this department that a plan of reorganization was contemplated, by which it was proposed that the stock of the two companies above mentioned should be held, owned, and controlled by the corporation originally known as the Excelsior Enterprise Company, since changed to Reading Company, as above mentioned.

The obvious purpose of this part of the scheme of reorganization seemed to be to escape from that provision of the constitution of 1874 which forbids any incorporated company doing the business of a common carrier to directly or indirectly engage in mining or manufac-

turing articles for transportation over its lines; or, stated differently, the union of the coal company with the railroad company.

The charter under consideration grants powers of the most com- 648
prehensive character, and, if valid, enables the company to control and to engage in almost any business except that of a bank issue.

Upon examination of the records in the auditor general's office it was learned that this corporation, although created in 1871, and constantly keeping up its organization, had practically done little or no business since the year 1875; and it was further learned that on or about November 9, 1896, the company had increased its capital from $100,000 to $40,000,000, and had paid to the Commonwealth the first installment of bonus upon such increase, amounting to nearly $50,000. It was announced also that a further increase of capital was contemplated to the amount of $140,000,000.

The attorney general then lodged with the State treasurer and auditor general a cautionary letter against receiving any further payments of bonus pending an investigation as to the power of the corporation to do the things proposed by it to be done.

By vote of the company, the capital was increased further, as I am informed, from $40,000,000 to $140,000,000, and it was then learned by the company that the further payment of bonus would not be received by the State treasurer until it could be demonstrated that the company still possessed the powers claimed for it.

It was believed by the attorney general that this company fell within 649
the provisions of section 1, Article XVI of the constitution, which reads as follows:

"All existing charters, or grants of special or exclusive privileges, under which a bona-fide organization shall not have taken place and business been commenced in good faith at the time of the adoption of this constitution, shall thereafter have no validity."

The counsel for the Reading Company voluntarily appeared before me on December 16, 1896, and produced certain evidence tending to show that a bona fide organization had taken place and business had been commenced in good faith some time prior to the adoption of the constitution, which became operative January 1, 1874.

It appears from the minute book of the company that the corporators met pursuant to notice August 5, 1871, and organized. By resolution it was provided that a book to receive subscriptions to the capital stock be opened, and on that day a treasurer was appointed for the corporators with power to prepare and open such subscription book.

The next meeting of the stockholders appears to have taken place January 4, 1873, and subscriptions were made to the amount of $50,000. On the same day there was a meeting of the board of directors, elected by the stockholders and an election of president and treasurer.

Another meeting of the board of directors was held January 8, 1873, 650
at which the treasurer of the company reported that he had received $10,000, being the amount paid on the stock subscribed, as above stated. On the same day the president, secretary, and treasurer were by resolution requested to give the notice required by the act of April 21, 1858, to the auditor general of the organization of the company.

January 10, 1873, the board of directors again met, adopted by-laws, and authorized the purchase of a certain claim against the National Railway Company.

On January 11, 1873, a special meeting of the stockholders was held, at which a resolution was offered that the stockholders of the Excelsior Enterprise Company consent and agree that the capital stock of said company shall be increased to 200,000 shares, and by vote increased the same to that amount, of which 100,000 shares were to be classed as common stock and 100,000 shares as preferred stock.

On January 13, 1873, the directors met and authorized the purchase of 75,000 shares of the common stock of the National Railway Company in consideration of 100,000 shares of the common stock of the Excelsior Enterprise Company.

January 14, 1873, the directors again met and transacted business, and again on January 18, 1873, at which meeting, on motion, the agreement submitted by counsel with the National and Stanhope Companies was accepted and the officers directed to sign and seal the same under directions of the company.

651 On May 23, 1873, the directors met and passed a resolution that the draft of the contract with the Philadelphia and Yardleyville Company for the construction of the Philadelphia and Yardleyville Railroad be approved and confirmed, and authorized the president and secretary to execute the same on behalf of the company. At the same meeting the draft of the contract with the National Railway Company of New Jersey was approved and the president and secretary authorized to execute the same.

The company also resolved at the same meeting to indorse and guarantee the bonds of the Philadelphia and Yardleyville Railroad Company to the amount of $1,500,000, and the bonds of the National Railway Company of New Jersey to the amount of $3,500,000, and by said resolution did indorse and guarantee the same and directed the president and secretary of the company to execute said indorsement and guaranty upon said bonds.

The directors again met on May 31, 1873, at which meeting was submitted a form of contract between the Victoria Construction Company and the National Company for building and equipping the railroads of the Philadelphia and Yardleyville Railroad Company and the National Railway Company of New Jersey.

652 On July 2, 1873, the directors again met and authorized the treasurer to receive from the Philadelphia and Yardleyville Railroad Company its bonds as the same shall become due to the company in compliance with the contract.

On December 4, 1873, at a meeting of the board of directors, the National Company, formerly the Excelsior Enterprise Company, adopted and agreed to a contract with the Hamilton Land Association.

December 26, 1873, at a directors' meeting, a communication was received, inclosing a proposal for the rebuilding of the National Railway from Bound Brook to the Delaware River, and referred to the executive committee. At the meeting the secretary reported that the lease on building No. 218 South Fourth Street, Philadelphia, occupied by the company, would expire on the 1st of January the next. On motion the secretary was authorized to rent an office i

Philadelphia. At the same meeting the executive committee was authorized to perfect details whereby the floating debt of the National Railway Company might be settled by preparing loan notes, if deemed advisable, due and payable on the 1st of January, 1875.

Other meetings were held February 4, 18, and 19, 1874, at which certain business was transacted. The directors again met March 8, 1875.

On June 1, 1875, there was an annual meeting of the stockholders at which directors were elected, and the annual meetings have been kept up ever since, except in 1881 and 1882. 653

The only question for consideration is whether or not there was such a bona-fide organization and commencement of business by the Excelsior Enterprise Company, now called the Reading Company, prior to January 1, 1874, as will prevent it from falling within the constitutional provision above cited.

That the company was not successful in business seems clear enough, and I have little doubt but that it was used as a tributary to a more important corporation and for the purposes of the latter. But the company was organized, did do business, and incurred large obligations (many of them may be still outstanding) prior to January 1, 1874.

POWERS GRANTED BY STATE.

The powers written into the charter of the corporation, while, in my opinion, inimical to the best interests of the Commonwealth, are, nevertheless, powers granted by the State, accepted by the corporators, and acted upon by them and those dealing with the company. Nor do I think the non-use of the corporate franchises after 1875 for a long period is ground of forfeiture. The organization as we have noticed has been constantly kept up. The corporation is a private one and the public had no interest in the use of the powers granted. The franchise to be a corporation was expressly retained by the annual elections of officers and appears never to have 654 been abandoned.

After due consideration, I reach the conclusion, most reluctantly, that the Commonwealth of Pennsylvania can not now successfully attack the chartered rights of the Reading Company; at least the rights of such a nature and character as had been exercised by the corporation prior to January 1, 1874. It had power to do the business in which it was engaged prior to the adoption of the new constitution.

Whether the other grants of special privileges, of the varied kinds set forth in the charter, continued after January 1, 1874, is a question that may be determined hereafter when the occasion arises. In construing a charter similar in character to that of the Reading Company in Carothers' Appeal, 118 Pa. St., 489, Mr. Justice Williams, speaking for the court, used the following language:

"The question which we have is not whether a single corporation organized under an 'omnibus charter' may be permitted to gather up into one corporate hand all the powers and franchises of the Commonwealth, but whether this company may do this particular business in which it had embarked its capital. We hold that it may; that the powers granted by the act of incorporation authorized it to engage in this business."

My view of the whole matter is that the charter of the company authorized it to do the kind of business in which it engaged prior to January 1, 1874, which business was of the same general character as
655 that in which it proposes to engage for the purpose of controlling the stocks of the Railway Company and the Coal and Iron Company.

The wisdom of the framers of the constitution of 1874, in denying to the legislature the power to grant special charters, becomes painfully apparent in the consideration of the manifold powers granted by the charter of the Reading Company, and the only consolation of the present generation is that they are not responsible for it.

H. C. McCormick, *Attorney-General.*

Counsel for Government also offer in evidence from the record of the old Reading suit Government Exhibit No. 142 in that case, being an agreement between the Lehigh and Wilkes-Barre Coal Company and the Philadelphia and Reading Coal and Iron Company, dated April 30, 1892, as follows:

Agreement between the Lehigh and Wilkesbarre Coal Company and the Philadelphia and Reading Coal and Iron Company, dated April 30, 1892.

This agreement, made this 30th day of April, 1892, by and between the Lehigh and Wilkesbarre Coal Company, a corporation of Pennsylvania, hereinafter called the Wilkesbarre Company, party of the first part, and the Philadelphia and Reading Coal and Iron Company, also a corporation of Pennsylvania, hereinafter called the Reading Company, party of the second part.

656 Whereas the Wilkesbarre Company is the owner or lessee, by certain indentures of lease, of various lands, mines, and improvements, situate along or near the railroad and branches of the Lehigh and Susquehanna Railroad; and

Whereas the Port Reading Railroad Company, as lessee of the Central Railroad Company of New Jersey, has arranged with the Reading Company for the transportation of all anthracite coal consigned by the Reading Company over the lines and branches of the Lehigh and Susquehanna Railroad Company and of the Central Railroad Company of New Jersey for and during the continuance of the said lease to the said Port Reading Railroad Company; and

Whereas it is proposed on the part of the Wilkesbarre Company to sell and deliver the entire product of its collieries, now operated or hereafter to be opened and operated by it, to the Reading Company to be shipped to market over the lines and branches of the Lehigh and Susquehanna Railroad and the Central Railroad Company of New Jersey, and the Reading Company has proposed to purchase and pay for the same:

Now, therefore, this agreement witnesseth: That the said parties hereto, in consideration of the sum of one dollar by each of the parties paid to the other, and the mutual covenants and stipulations herein contained and written, have agreed and do hereby covenant and agree to and with each other as follows—that is to say:

657 First. The said Wilkesbarre Company hereby sells and agrees to deliver to the Reading Company the entire product of its collieries

now opened and hereafter to be opened and operated, for and during the entire period hereinafter fixed and determined, and the Reading Company hereby agrees to take, receive, and pay for the product of the said collieries and of each of them, for and during the entire term of this agreement, as hereinafter provided; and to ship the same in accordance with the existing agreements between the Lehigh Coal and Navigation Company and the Central Railroad Company of New Jersey.

Second. The Reading Company agrees that from its allotment of cars which it shall receive from time to time from the Central Railroad Company of New Jersey, or any lessee thereof, it shall and will at all times during the continuance of this contract cause to be distributed to the collieries operated by the Wilkesbarre Company such number of cars as will enable the Wilkesbarre Company to mine and ship monthly, in as nearly daily quantities as practicable (Sundays and legal holidays excepted) such an amount of anthracite coal as it can produce from said collieries as a whole, by working the same for as many days and to as full a capacity in each month as the Reading Company works its own collieries. It being understood and agreed that the Wilkesbarre Company shall have the right, from month to month, to apportion its entire product among its various collieries as it shall deem best. 658

And further, in case the collieries located on the lines and branches of the Lehigh and Susquehanna Railroad, other than those of the Wilkesbarre Company, should not, for any cause, continue to ship the same proportion of the total tonnage of the whole anthracite region over the said lines which was shipped from them in 1891, then, and in that case, the Wilkesbarre Company shall be at liberty to mine and deliver, and the Reading Company shall receive and pay for, an amount equal to the deficiency, in addition to the quantity hereto provided to be mined and sold and received and paid for, and the Reading Company shall cause sufficient cars to be supplied therefor, so that there shall always continue to be shipped monthly over the said railroads of the central system an amount of anthracite coal equal in proportion of the total production of anthracite coal in the whole anthracite region to the proportion shipped on the said sytem in the year ending December 31, 1891.

Third. The Reading Company agrees to pay and the Wilkesbarre Company agrees to accept monthly the following prices for the said coal, when prepared in accordance with the standard hereinafter mentioned and delivered in railroad cars at the said breaker, viz:

For all sizes larger than pea coal, sixty (60) per cent of the average "free on board" price received for said sizes at tide points at or near New York between Perth Amboy and Hoboken, both inclusive, for 659
the Wyoming and Lackawanna coals of the Lehigh Valley Coal Company, and the Lehigh and Wilkesbarre Coal Company (hereinafter called Wyoming coal) when the said f. o. b. price is four dollars ($4) per ton or less; when the said average f. o. b. price is more than four dollars ($4) per ton, forty (40) per cent of the increase above four dollars ($4), until the f. o. b. price realized reaches four dollars and fifty cents ($4.50), after which the Wilkesbarre Company shall receive thirty (30) per cent of any advance in the said f. o. b. price above four dollars and fifty cents ($4.50).

For example:

When the f. o. b. price is—	Wilkesbarre Company will receive—	Reading Company will receive—	When the f. o. b. price is—	Wilkesbarre Company will receive—	Reading Company will receive—
$3.80	$2.28	$1.52	$4.50	$2.60	$1.90
3.90	2.34	1.56	4.60	2.63	1.97
4.00	2.40	1.60	4.70	2.66	2.04
4.10	2.44	1.66	4.80	2.69	2.11
4.20	2.48	1.72	4.90	2.72	2.18
4.30	2.52	1.78	5.00	2.75	2.25
4.40	2.56	1.84	Etc.	Etc.	Etc.

* * * * * * *

Seventh. The Reading Company shall and will cause all the coal purchased under the provisions of this contract to pass to or towards its market over and by the lines of the Central Railroad of New Jersey
660 system, it being the intention hereof to provide that the Reading Company as consignor and shipper of said coal shall not and will not divert or cause to be diverted from the transportation lines or terminals comprising the system of the Central Railroad Company of New Jersey the present traffic of said Central Railroad Company of New Jersey, or any traffic which would naturally go to or towards its destination by or over the said system.

* * * * * * *

Twelfth. This contract is expressly upon condition that the Reading Company shall not transfer, assign, or pledge it in any manner, or interest or associate therein any other person or persons, body politic or corporate, without the written consent of the Wilkesbarre Company first had and obtained. And that no judicial or other sale or transfer of any kind whatever, whether upon or under any writ, order, or decree issued by or out of any court, or by any justice of the peace, alderman, or other judicial officer or tribunal, or by virtue of or in compliance with any order or decree of any court of equity or chancery or any proceedings in insolvency or bankruptcy shall have the same effect of transferring the interest of the Reading Company herein for any time or term whatever to any person or persons, body politic or corporate, without the written consent of the Wilkesbarre Company first had and obtained.

* * * * * * *
661

Fourteenth. It being the intention hereof and of the parties hereto that this contract shall continue for a period coincident with the term of the above-recited lease from the Central Railroad Company of New Jersey to the Port Reading Railroad Company, it is hereby further mutually covenanted and agreed that this contract shall be binding upon and enure to the benefit of the parties hereto, and their successors and assigns, respectively, for and during the period of nine hundred and ninety-nine (999) years from the date hereof, unless the said lease of the Central Railroad Company of New Jersey to the Port Reading Railroad Company shall be cancelled or annulled before the termination of that period, and that in that event this contract shall, at the option of either party thereto and upon written notice by such party to the other of its intention to exercise that option, cease

to be in force at and upon the termination, cancellation, or annulment of the said lease.

In witness whereof the parties hereto have caused their corporate seals to be hereunto affixed, attested by their secretaries, and these presents to be signed by their respective presidents the day and year aforesaid.

Witness:

THE LEHIGH AND WILKESBARRE COAL COMPANY,
By J. R. MAXWELL, *President.*

Attest:

W. T. ZELL, *Secretary.* (SEAL.)

THE PHILADELPHIA AND READING 662
COAL AND IRON COMPANY,
By A. A. McLEOD, *President.*

Attest:

F. P. KAERCHER, *Secretary.* (SEAL.)

Counsel for Government also offered in evidence contract dated 663
March 21, 1879, between the Western Union Telegraph Company and the Philadelphia and Reading and Pottsville Telegraph Company.

Defendants' counsel reserve the right to object to this offer.

Contract marked "**Exhibit No. 52,**" and is as follows:

Memorandum of agreement made this twenty-first day of March, 1879 by and between the Western Union Telegraph Company, party of the first part, and the Philadelphia, Reading and Pottsville Telegraph Company, party of the second part, hereinafter respectively designated as the Western Union Company and the Reading Company.

Witnesseth:

Whereas the parties hereto now own and operate lines of telegraph in competition with each other between certain places on the railroads owned, leased, controlled or operated by the Philadelphia and Reading Rail Road Company and Reading and Columbia Railroad Company; and

Whereas the interests of both parties will be promoted by a friendly alliance, and by an agreement which shall provide for an interchange and an equitable division of the business between them:

Now, therefore, the parties hereto have mutually agreed as follows:

First. The Western Union Company agrees to close its offices at Alburtis, Ashland, Birdsboro, Blandon, Centralia, Conshohocken, Catawissa, Donaldson, Emaus, Fleetwood, Frackville, Gilberton, 664
Girardville, Hamburg, Hummelstown, Jalappa, Kutztown, Lebanon Llewellyn, Lost Creek, Lyons, Macungie, Mahanoy, Plane, Minersville, Moselem, Mount Carmel, Myerstown, Mahanoy City, Norristown, Orwigsburg, Phœnixville, Pine Grove, Port Carbon, Port Clinton, Pottstown, Pottsville, Reading, Royersford, Saint Clair, Stanton, Schuylkill Haven, Shamokin, Shenandoah, Tamaqua, Temple, Topton, Tower City, Tremont, Trevorton, Tuscarora, Warnersville, West Shamokin, and Womelsdorf, and the offices of the Reading Company at the said points, together with those now and hereafter maintained by the Reading Company at places where the Western Union Company may have none, shall be designated for convenience or reference as offices in class A.

And the Western Union Company further agrees not to open or maintain an office at any point on any railroad or canal which is now owned, worked, or leased by the Philadelphia and Reading Rail Road Company, or on the Reading and Columbia, or Lancaster and Reading Narrow Gauge Railroads, for the transaction of public telegraph business, without the consent of the Reading Company, except at Philadelphia, Lancaster, Chester, Columbia, Dauphin, Harrisburg, Allentown, Bethlehem, Easton, Catasauqua, Slatington, Rupert, Danville, Milton, Muncy, and Williamsport, which offices, together with those which may be opened by the Reading Company at places where the Western Union Company may have offices on any line of railroad or canal which may now or hereafter be owned, leased, or operated by the Philadelphia and Reading or the Reading and Columbia Railroad Company, shall be designated as offices in class B.

Second. The Reading Company agrees not to open or maintain an office for the transaction of public telegraph business at any point
665 where the Western Union Company now has an office without its consent, except at the places named in the first section, it being expressly understood that nothing herein contained shall prevent the Reading Company from opening and maintaining telegraph offices for the transaction of public telegraph business at such points as it may think desirable on any line of railroad or canal which may now or hereafter be owned, leased, or operated by either the Philadelphia and Reading Railroad Company or the Reading and Columbia Railroad Company.

Third. The receipts of money for telegrams between all points on the railroads and canals now and hereafter owned, operated, or leased by the Philadelphia and Reading Railroad Company, the Reading and Columbia Railroad Company, and the Lancaster and Reading Narrow Gauge Railroad Company shall belong to the Reading Company, except receipts for telegrams between offices in class B, which shall belong to the Western Union Company.

666 Fourth. The Western Union Company shall receive fifteen per cent of the receipts of all telegrams taken in at its offices in class B, including its branch offices in Philadelphia, and given to the Reading Company for transmission to its offices in class A.

Fifth. The Reading Company shall receive fifteen per cent of the receipts of all telegrams taken in at its offices in class B, including its branch offices in Philadelphia, and given to the Western Union Company for transmission to its offices, including those in class B.

Sixth. The Reading Company shall receive fifteen per cent of the receipts and checks of all telegrams sent and received by its employees between its offices in class A and those of the Western Union Company located beyond the territory of the Reading Company. No additional compensation shall be allowed the Reading Company for transacting the said business.

Seventh. If deemed advisable, the Reading Company may close its public telegraph offices at all or any of the places named in class B and run one or more of its wires into the offices of the Western Union Company at said places, and allow the Western Union Company fifteen per cent of the receipts and checks of telegrams sent and received by its employees between its offices and those of the Reading Company in class A. No additional compensation shall be allowed the Western Union Company for the transaction of the said

business. The Reading Company reserves the right to reopen at its 667
pleasure any of said offices which it may have closed.

Eighth. Telegrams to and from points on the lines of other companies which connect with the lines of either of the parties hereto, shall be treated in the same manner as telegrams to and from the stations at which they are transferred. The allowance of fifteen per cent shall apply only to the tolls to and from the places at which telegrams are transferred.

Ninth. The Western Union Company shall have the right to receive from the Pennsylvania, Lehigh Valley, Central Railroad of New Jersey, Delaware, Lackawanna and Western, Philadelphia and Erie, Philadelphia, Wilmington and Baltimore and other railroad companies only at the same rates as charged by the Reading Company, such public telegrams as may be presented at the stations of said railroad companies, in the territory of the Reading Company, and transmit them to any of the offices of the Western Union Company, including offices in class B as required by the agreements between the Western Union Company and said railroad companies, respectively, and retain its proportion of the tolls thereon, but shall transfer to the Reading Company all telegrams received at its offices for offices in class A.

Tenth. The Reading Company shall have the right to receive telegrams from companies in competition with the Western Union Company, only upon the prepayment of its regular local tariff rates, and transmit them to its offices in class A and retain the tolls thereon, but 668
shall not transfer to other companies telegrams received at its offices for points at which the Western Union Company or its connecting lines have offices.

Eleventh. The Western Union Company shall have the right to maintain for its through business, telegraph lines in the territory of the Reading Company, and to run at its own expense said lines into the offices of the Reading Company for testing purposes which shall be attended to by the Reading Company free of charge.

Twelfth. The Reading Company shall have the right to run a suitable number of its wires into the principal office of the Western Union Company in the city of Philadelphia, to facilitate the interchange of business between the parties hereto. The Reading Company shall furnish the operators, instruments, batteries, office fixtures, and stationery required for the transaction of its business in said office, and in consideration of its occupancy of said office, shall pay to the Western Union Company such proportion of the cost of rent, heat, light, transfer, clerical, and delivery expenses of said office as the number of telegrams sent and received by the Reading Company may bear to the total number of telegrams sent and received at the said office by both the parties hereto.

Thirteenth. The rates between offices in class A, also between offices 669
in class A and class B, shall be fixed by the Reading Company.

The rates between offices in class B shall be fixed by the Western Union Company.

The rates between offices in class A on the one hand and offices of the Western Union Company on the other hand excepting offices in class B shall not be changed without the consent of both the parties hereto.

Fourteenth. The Reading Company shall have the right to make special rates between all offices maintained by it on telegrams relat-

ing to the shipment of express goods or miscellaneous freight and coal over any railroad or canal now owned, worked, or leased by the Philadelphia and Reading Railroad Company or the Reading and Columbia Railroad Company or the Lancaster and Reading Narrow Gauge Railroad Company or which may hereafter be owned, worked, or leased by either of said companies, as well as the telegrams relating to the business of the Philadelphia and Reading Coal and Iron Company, or such telegrams may be transmitted free of charge by the Reading Company over its wires between offices maintained by it.

Fifteenth. Public or commercial telegrams between all of the Reading Company's offices in class A and those of the Western Union Company outside of the territory of the Reading Company shall be checked direct, and monthly statements in duplicate of such business shall be made by the Reading Company at each office in
670 class A, and copies thereof forwarded to the proper officer of the Western Union Company.

Offices of the Reading Company located at places in class B shall be regarded as branch offices of the Western Union Company with respect to business with all offices of the Western Union Company, including offices in class B, and such branch offices shall make daily reports of such business, and turn over the receipts therefrom to the Western Union Company in such manner as it may direct; and the offices of the Western Union Company in class B shall be regarded as branch offices of the Reading Company with respect to business with all offices in class A, and shall make daily reports of such business and turn over the receipts therefrom to the Reading Company in such manner as it may direct.

Sixteenth. The receipts of all telegraph business at offices of the Reading Company in class A shall be sent to the treasurer of the Reading Company, and settlement shall be made monthly between the parties hereto.

Seventeenth. The telegraph signs, blanks, and envelopes used at the offices of the Reading Company shall be marked "Philadelphia, Reading and Pottsville and Western Union Telegraph Companies," and the cost thereof shall be paid by the Reading Company.

Eighteenth. Claims for damages and for the refunding of charges on messages arising from error, delay, or nondelivery of such mes-
671 sages shall be assumed by the party whose employees may be at fault, and in cases where the fault can not be located, each party shall assume its share of the amount of damages or refund the tolls in proportion to the revenue derived by it from such messages.

Nineteenth. The Reading Company shall repair the lines of the Western Union Company within the territory of the Reading Company when called upon by the Western Union Company to do so, and the cost of said repairs shall be paid monthly to the said Reading Company by the said Western Union Company.

Twentieth. The Western Union Company shall have the right to attach its wires for through business to the poles of the Reading Company on the East Pennsylvania and other railroads owned, leased, or controlled by the Philadelphia and Reading or Reading and Columbia Railroad Company, and said Western Union Company shall pay to the said Reading Company three dollars per mile of wire per annum for each of the first three wires, and two dollars per mile

of wire per annum for each additional wire which may be maintained by the Western Union Company on any line of poles of the Reading Company.

The Reading Company shall have the right to attach its wires to the poles of the Western Union Company, and shall pay to the Western Union Company three dollars per mile of wire per annum for each of the first three wires, and two dollars per mile of wire per annum for each additional wire which may be maintained by the Reading Company on any line of poles of the Western Union Company. 672

It is understood and agreed, however, that the wires of neither party shall be placed on the poles of the other party unless such poles are fully capable of bearing the additional wires in a safe and proper manner and without interfering with the wires already on such poles.

Twenty-first. The parties hereto agree to connect and exchange business exclusively with each other so far as they legally may. Each party shall receive from the other all telegrams offered at any point of transfer and promptly transmit and deliver them at their destination.

Twenty-second. The Western Union Company (the American District Telegraph Company of Philadelphia assenting) shall transfer to the Reading Company at Philadelphia for delivery all telegrams received for Powers and Weightman and other parties in Philadelphia who may desire their telegrams to be delivered to them by the Reading Company.

Twenty-third. It is understood and agreed that nothing herein contained shall be construed as requiring either party hereto to establish or maintain an office at any point where, in the opinion of its officers, it may be inadvisable to do so.

Twenty-fourth. This agreement shall supersede all previous contracts between the parties hereto, and its provisions shall be and continue in force for the term of ten years from the first day of April, 1879, and thereafter until one year's written notice shall have been 673 given by one of the parties hereto of its intention to terminate the same; and in case of any disagreement concerning the true intent and meaning of any of its provisions, the subject of such difference shall be referred to three arbitrators, one chosen by each party and the third by the two others chosen, and the decision of such arbitrators or of a majority thereof shall be final and conclusive.

In witness whereof the parties hereto have caused the names of their respective presidents to be hereunto subscribed and their corporate seals to be attested the day and year first above written.

THE WESTERN UNION TELEGRAPH COMPANY,

(Signed) NORVIN GREEN, *President.*

(Signed) By A. R. BREWER, *Secretary.*

THE PHILADELPHIA, READING AND POTTSVILLE TELEGRAPH COMPANY,

(Signed) F. B. GOWEN, *President.*

Attest:

(Signed) By HOWARD HANCOCK, *Secretary.*

674 Mr. KINGSBURY. Is it admitted that the stock of the Philadelphia, Reading and Pottsville Telegraph Company was at that time owned by the Reading Railroad and is now owned by the Reading Company?

Mr. HEEBNER. That is admitted.

Mr. Reynolds produced copy of letter dated May 21, 1907, from George F. Baer to James McCrea, called for at the last meeting.

Letter offered in evidence by Government's counsel, marked **"Exhibit No. 53,"** and is as follows:

21ST MAY, 1907.

MY DEAR MR. MCCREA: I enclose you a letter from Mr. E. H. Jennings, president of the Anthracite Coal Company of Pittsburgh. The situation is this:

The Anthracite Coal Company is the successor of the Natalie Coal Company. The Natalie Coal Company was an operation on our system; they built a short line of railroad to connect with us. Subsequently they obtained a lease from your coal company to a tract of land adjoining their Natalie colliery. It was only fair that you should have the transportation of the coal from your own lands; therefore, a connection was made with your system for the purpose of transferring this coal to you.

The Natalie Coal Company failed and was reorganized, as I under-
675 stand it, as the Anthracite Coal Company. In the reorganization the Natalie Railroad passed into the hands of creditors other than those of the Natalie Coal Company.

Now, the Anthracite Coal Company propose to us to take the Natalie Railroad and operate it. We find on examination that it would require an expenditure of about $40,000 to put the road in working order. They offer to transfer their rolling stock (valued at $25,000) to us in part payment of this expenditure, and the balance to be credited on account of rental. The rental is to be between $4,000 and $5,000 a year; the exact figures were not agreed upon.

Mr. Jennings, whom you know, has associated Messrs. Madeira, Thorne, and Neal with him in the proposed operation of this colliery. They assert that that Natalie property can not be worked advantageously without obtaining from your company a lease on your adjoining lands. I understand that Mr. Williams has objected to giving this lease for the reason that it will be profitable for him to mine this same coal from one of your collieries. Mr. Thayer suggested that your company would make this lease, provided, in addition to the traffic from this leased land, your company should have a percentage of the traffic from the Natalie Company's lands. To this we have objected for the following reasons:

1st. The Natalie operation was on our land, and we were, therefore, entitled under the general comity between the companies to retain this tonnage.

676 2nd. We could not afford to spend $40,000, in repairing this railroad and take the risks of the successful operation of the Natalie colliery, and turn any portion of the traffic over to you.

I frankly told these gentlemen that rather than do that we would allow your company to take the Natalie Railroad and thereby deprive ourselves of all the tonnage. My theory was, that as we can produce from our own collieries sufficient coal to supply the demands along our

system we would lose very little by allowing this coal to be sold on your system. Mr. Jennings and his friends, however, objected to this. They naturally want the advantage of the markets on our line.

Under these circumstances, I suggested that the matter be postponed until your return. I am ready to take the matter up with you at any time it may suit your convenience. You see these gentlemen are naturally very anxious to have an early answer.

Yours truly,

(Signed) GEO. F. BAER, *President.*

Mr. JAMES MCCREA,
President Pennsylvania Railroad Company, Philadelphia.

At the request of counsel for Government, counsel for the various 677
defendant companies produced certain price circulars of various companies.

Philadelphia and Reading Coal and Iron Company produced, in compliance with the demand, circular for September 1, 1913, issued by that company, and the circulars of April 1st, May 1st, June 2nd, July 1st, and August 1st, 1913, the Government having requested only April 1st; nevertheless the defendants' counsel produced the others, because without them it is not fully clear what the circular price is from month to month.

Circulars marked **Exhibits 54, 55, 56, 57, 58, 59, and 60**, and are as follows:

General price circular No. 6,
1913.

[Branch offices: New York, 141 Liberty Street; Boston, 141 Milk Street.]

THE PHILADELPHIA & READING COAL & IRON CO.,
OFFICE OF THE SALES DEPARTMENT,
Reading Terminal, Philadelphia, September 1st, 1913.

Taking effect this date, the prices of this company's coals, delivered on board vessels at Port Richmond, Philadelphia, Pa., for shipments beyond the Capes of the Delaware, and New York shipping port, subject to our printed conditions of sale, will be as follows:

PHILADELPHIA (PORT RICHMOND). 678

	Lump.	St. Boat.	Broken.	Egg.	Stove.	Chest.
Free white ash			$4.75	$5.00	$5.00	$5.25
Hard white ash			4.85	5.00	5.00	5.25
Shamokin				5.25	5.25	5.25
Schuylkill red ash				5.50	5.50	5.50
Lorberry				5.50	5.50	5.50
Lykens Valley			5.75	6.00	6.00	6.00

NEW YORK.

	Lump.	St. Boat.	Broken.	Egg.	Stove.	Chest.
Free white ash			$5.00	$5.25	$5.25	$5.50
Hard white ash			5.10	5.25	5.25	5.50
Shamokin				5.50	5.50	5.50
Schuylkill red ash				5.75	5.75	5.75
Lorberry				5.75	5.75	5.75
Lykens Valley			6.00	6.25	6.25	6.25

All remittances to be made by check to the order of the Philadelphia & Reading Coal & Iron Co., H. E. Paisley, treasurer, Reading Terminal, Philadelphia, Pa.

R. J. MONTGOMERY,
General Coal Agent.

679 *General price circular No. 1, 1913.*

(Branch offices: New York, 143 Liberty Street; Boston, 141 Milk Street.)

THE PHILADELPHIA & READING COAL & IRON CO.,
OFFICE OF THE SALES DEPARTMENT,
Reading Terminal, Philadelphia, April 1st, 1913.

Taking effect this date, the prices of this company's coals, delivered on board vessels at Port Richmond, Philadelphia, Pa., for shipments beyond the Capes of the Delaware and New York shipping port, subject to our printed conditions of sale, will be as follows:

PHILADELPHIA (PORT RICHMOND).

	Lump.	St. Boat.	Broken.	Egg.	Stove.	Chest.
Free white ash			$4.75	$5.00	$5.00	$5.25
Hard white ash			4.85	5.00	5.00	5.25
Shamokin				5.25	5.25	5.25
Schuylkill red ash				5.50	5.50	5.50
Lorberry				5.50	5.50	5.50
Lykens Valley			5.75	6.00	6.00	6.00

NEW YORK.

	Lump.	St. Boat.	Broken.	Egg.	Stove.	Chest.
Free white ash			$5.00	$5.25	$5.25	$5.50
Hard white ash			5.10	5.25	5.25	5.50
Shamokin				5.50	5.50	5.50
Schuylkill red ash				5.75	5.75	5.75
Lorberry				5.75	5.75	5.75
Lykens Valley			6.00	6.25	6.25	6.25

680 All remittances to be made by check to the order of the Philadelphia & Reading Coal & Iron Co., H. E. Paisley, treasurer, Reading Terminal, Philadelphia, Pa.

A reduction of fifty cents per ton will be allowed from the above prices, on coal shipped during the month of April, 1913.

R. J. MONTGOMERY,
General Coal Agent.

THE PHILADELPHIA & READING COAL & IRON CO.,
OFFICE OF THE SALES DEPARTMENT,
Reading Terminal, Philadelphia, Pa.

Conditions for the sale and shipment of coal.

1. All prices subject to change without notice.

2. The coal is designated by the names known in the company's business; those names are used in selling or quoting prices, and parties are particularly requested to make use of the same in giving their orders.

3. All sales shall be at invoice weights as taken at point of shipment, and to be made for cash or with six per cent interest added in all cases for any deferred payment—the interest to commence from the date of the bill of lading.

4. The company, when requested by purchasers, will use their best efforts to procure vessels for the transportation of coal and to effect insurance thereon, but in so doing will not assume nor is it to be charged with any responsibility in relation thereto; and should the 681
company be unable to procure suitable vessels, or the purchasers fail to furnish them within the month during which purchase was made, the company reserves the right to cancel the order to the extent of the unfilled portion thereof.

5. Coal, when shipped on board of vessels, is to be considered as delivered to, and thereafter at the risk of, the purchaser. Bills of lading, receipts or other evidences of shipment to be proof of delivery, both as regards time and quantity.

6. Reasonable exertions will be made by the company to fulfill its contracts for the delivery of coal, but if at any time the operations or business of the company at the mines, or on railroads or canals, shall be interrupted by floods, breaks, accidents, or by combinations, turnouts or strikes among the miners, boatmen, or other employees, either for an increase of wages or on account of a reduction thereof, or for any other cause, or by casualties of any kind, the obligation of the company to deliver coal under its contracts or agreements may, at its option, be cancelled to the extent of the average quantity the purchaser would be entitled to receive under their contracts or agreements during the period of such interruption; and the company shall not be liable for damages by reason of such nondelivery, or for demurrage of vessels or otherwise.

R. J. MONTGOMERY,
General Coal Agent.

APRIL 1ST, 1913.

General price circular No. 2, 1913. 682

(Branch offices: New York, 143 Liberty Street; Boston, 141 Milk Street.)

THE PHILADELPHIA & READING COAL & IRON CO.,
OFFICE OF THE SALES DEPARTMENT,
Reading Terminal, Philadelphia, May 1st, 1913.

Taking effect this date, the prices of this company's coals, delivered on board vessels at Port Richmond, Philadelphia, Pa., for shipments beyond the capes of the Delaware and New York shipping port, subject to our printed conditions of sale, will be as follows:

PHILADELPHIA (PORT RICHMOND).

	Lump.	St. boat.	Broken.	Egg.	Stove.	Chest.
Free white ash			$4.75	$5.00	$5.00	$5.25
Hard white ash			4.85	5.00	5.00	5.25
Shamokin				5.25	5.25	5.25
Schuylkill red ash				5.50	5.50	5.50
Lorberry				5.50	5.50	5.50
Lykens Valley			5.75	6.00	6.00	6.00

NEW YORK.

	Lump.	St. boat.	Broken.	Egg.	Stove.	Chest.
Free white ash			$5.00	$5.25	$5.25	$5.50
Hard white ash			5.10	5.25	5.25	5.50
Shamokin				5.50	5.50	5.50
Schuylkill red ash				5.75	5.75	5.75
Lorberry				5.75	5.75	5.75
Lykens Valley			6.00	6.25	6.25	6.25

All remittances to be made by check to the order of the Philadelphia & Reading Coal & Iron Co., H. E. Paisley, treasurer, Reading Terminal, Philadelphia, Pa.

A reduction of forty cents per ton will be allowed from the above prices on coal shipped during the month of May, 1913.

R. J. MONTGOMERY,
General Coal Agent.

683 *General price circular No. 3, 1913.*

(Branch offices: New York, 143 Liberty Street; Boston, 141 Milk Street.)

THE PHILADELPHIA & READING COAL & IRON CO.,
OFFICE OF THE SALES DEPARTMENT,
Reading Terminal, Philadelphia, June 2nd, 1913.

Taking effect this date, the prices of this company's coals, delivered on board vessels at Port Richmond, Philadelphia, Pa., for shipments beyond the capes of the Delaware and New York shipping port, subject to our printed conditions of sale, will be as follows:

PHILADELPHIA (PORT RICHMOND).

	Lump.	St. boat.	Broken.	Egg.	Stove.	Chest.
Free white ash			$4.75	$5.00	$5.00	$5.25
Hard white ash			4.85	5.00	5.00	5.25
Shamokin				5.25	5.25	5.25
Schuylkill red ash				5.50	5.50	5.50
Lorberry				5.50	5.50	5.50
Lykens Valley			5.75	6.00	6.00	6.00

NEW YORK.

	Lump.	St. boat.	Broken.	Egg.	Stove.	Chest.
Free white ash			$5.00	$5.25	$5.25	$5.50
Hard white ash			5.10	5.25	5.25	5.50
Shamokin				5.50	5.50	5.50
Schuylkill red ash				5.75	5.75	5.75
Lorberry				5.75	5.75	5.75
Lykens Valley			6.00	6.25	6.25	6.25

All remittances to be made by check to the order of the Philadelphia & Reading Coal & Iron Co., H. E. Paisley, treasurer, Reading Terminal, Philadelphia, Pa.

A reduction of thirty cents per ton will be allowed from the above prices on coal shipped during the month of June, 1913.

R. J. MONTGOMERY,
General Coal Agent.

684

General price circular No. 4,
1913.

(Branch offices: New York, 143 Liberty Street; Boston, 141 Milk Street.)

THE PHILADELPHIA & READING COAL & IRON CO.,
OFFICE OF THE SALES DEPARTMENT,
Reading Terminal, Philadelphia, July 1st, 1913.

Taking effect this date, the prices of this company's coals, delivered on board vessels at Port Richmond, Philadelphia, Pa., for shipments beyond the Capes of the Delaware and New York shipping port, subject to our printed conditions of sale, will be as follows:

PHILADELPHIA (PORT RICHMOND).

	Lump.	St. Boat.	Broken.	Egg.	Stove.	Chest.
Free white ash			$4.75	$5.00	$5.00	$5.25
Hard white ash			4.85	5.00	5.00	5.25
Shamokin				5.25	5.25	5.25
Schuylkill red ash				5.50	5.50	5.50
Lorberry				5.50	5.50	5.50
Lykens Valley			5.75	6.00	6.00	6.00

NEW YORK.

	Lump.	St. Boat.	Broken.	Egg.	Stove.	Chest.
Free white ash			$5.00	$5.25	$5.25	$5.50
Hard white ash			5.10	5.25	5.25	5.50
Shamokin				5.50	5.50	5.50
Schuylkill red ash				5.75	5.75	5.75
Lorberry				5.75	5.75	5.75
Lykens Valley			6.00	6.25	6.25	6.25

All remittances to be made by check to the order of the Philadelphia & Reading Coal & Iron Co., H. E. Paisley, treasurer, Reading Terminal, Philadelphia, Pa.

A reduction of twenty cents per ton will be allowed from the above prices on coal shipped during the month of July, 1913.

R. J. MONTGOMERY,
General Coal Agent.

685

General price circular No. 5,
1913.

(Branch offices: New York, 143 Liberty Street; Boston, 141 Milk Street.)

THE PHILADELPHIA & READING COAL & IRON CO.,
OFFICE OF THE SALES DEPARTMENT,
Reading Terminal, Philadelphia, August 1st, 1913.

Taking effect this date, the prices of this company's coals, delivered on board vessels at Port Richmond, Philadelphia, Pa., for shipments beyond the Capes of the Delaware and New York shipping port, subject to our printed conditions of sale, will be as follows:

PHILADELPHIA (PORT RICHMOND).

	Lump.	St. Boat.	Broken.	Egg.	Stove.	Chest.
Free white ash			$4.75	$5.00	$5.00	$5.25
Hard white ash			4.85	5.00	5.00	5.25
Shamokin				5.25	5.25	5.25
Schuylkill red ash				5.50	5.50	5.50
Lorberry				5.50	5.50	5.50
Lykens Valley			5.75	6.00	6.00	6.00

	Lump.	St. Boat.	Broken.	Egg.	Stove.	Chest.
Free white ash	.....	.....	$5.00	$5.25	$5.25	$5.50
Hard white ash	.....	.....	5.10	5.25	5.25	5.50
Shamokin	.....	.....	.....	5.50	5.50	5.50
Schuylkill red ash	.....	.....	.....	5.75	5.75	5.75
Lorberry	.....	.....	.....	5.75	5.75	5.75
Lykens Valley	.....	.....	6.00	6.25	6.25	6.25

All remittances to be made by check to the order of the Philadelphia & Reading Coal & Iron Co., H. E. Paisley, treasurer, Reading Terminal, Philadelphia, Pa.

A reduction of ten cents per ton will be allowed from the above prices on coal shipped during the month of August, 1913.

R. J. MONTGOMERY,
General Coal Agent.

686 Mr. REYNOLDS. The Lehigh and Wilkes-Barre Coal Company does not issue a circular in New York, but it has, however, through its New Jersey Company issued circulars for the Newark business, and it issues line circulars in the interior, but the New York tide business is not covered by any circular.

Mr. Reynolds produced circulars of the Lehigh and Wilkes-Barre Coal Company of New Jersey, being the selling agent in New Jersey at Newark and vicinity of the Lehigh and Wilkes-Barre Coal Company, for April 1st, 1913, and September 1st, 1913.

Circulars offered in evidence by counsel for Government (marked "**Exhibits 61 and 62**"), as follows:

687 LEHIGH & WILKES-BARRE COAL CO. OF N. J.

Pockets: Ferry and Congress Street, Market and Bowery Street. Office: 48 Congress Street; L. D. Phone 536 Market; Newark Phone 536.)

NEWARK, N. J., *April 1st, 1913.*

The following prices will be charged for this company's coal at their pockets during the month of

APRIL, 1913.

(Fifteen cents per ton less for coal in cars on track.)

	Wilkes-Barre, gross. (2,240 lbs.)	Honey-brook, gross. (2,240 lbs.)	Net. (2,000 lbs.)
Broken	$4.65	$4.65	$4.15
Egg	4.90	4.90	4.38
Stove	4.90	4.90	4.38
Chestnut	5.15	5.15	4.60
Pea	3.65	.....	3.26
Buck No. 1	2.90	.....	2.59
Buck No. 2	2.40	.....	2.14

Terms cash.

Orders that are accepted will be subject to our ability to fill during the current month.

We will make every effort to fill orders promptly, but we shall not be held responsible for failure to ship, by reason of suspension of mining, or any other cause beyond our control.

The company reserves the right to change prices at any time without 688
notice, and orders sent in will not bind the company until accepted.

A. DENITHORNE, *President.*

LEHIGH & WILKES-BARRE COAL CO. OF N. J.

(Pockets: Ferry and Congress Street, Market and Bowery Street. Offices: 48 Congress Street; L. D. Phone 648 Market; Newark Phone 536.)

NEWARK, N. J., *September 1st, 1913.*

The following prices will be charged for this company's coal at their pockets during the month of

SEPTEMBER, 1913.

(Fifteen cents per ton less for coal in cars on track.)

	Wilkes-Barre, gross. (2,240 lbs.)	Honey-brook, gross. (2,240 lbs.)	Net. (2,000 lbs.)
Broken	$5.15	$5.15	$4.60
Egg	5.40	5.40	4.82
Stove	5.40	5.40	4.82
Chestnut	5.65	5.65	5.05
Pea	3.65	.....	3.26
Buck No. 1	2.90	.....	2.59
Buck No. 2	2.40	.....	2.14

In addition to the prices quoted above, there will be charged:

Pennsylvania State tax of two and one-half per cent. of the market value of the coal at the mines.

Terms cash.

Orders that are accepted will be subject to our ability to fill during the current month.

We will make every effort to fill orders promptly, but we shall not be held responsible for failure to ship, by reason of suspension of mining, or any other cause beyond our control.

The company reserves the right to change prices at any time with- 689
out notice, and orders sent in will not bind the company until accepted.

A. DENITHORNE, *President.*

Mr. Drinker stated that he was informed by Mr. Davies, general coal agent of the Lehigh Coal and Navigation Company, that the Navigation Company issued no price circulars during 1913.

Mr. Heebner produced statement of anthracite coal purchased by Philadelphia and Reading Coal and Iron Company during the years ended December 31, 1911 and 1913.

Government's counsel offered in evidence statement produced by Mr. Heebner (marked "**Exhibit No. 63**"), as follows:

Exhibit No. 63.

THE PHILADELPHIA AND READING COAL AND IRON COMPANY.

Statement of anthracite coal purchased during years ended December 31, 1911 and 1913.

FROM WHOM PURCHASED.

Month.	Total tonnage purchased.	Enterprise Coal Co.	St. Clair Coal Co.	Pine Hill Coal Co.	Excelsior Coal Co. (Excelsior colly).	Excelsior Coal Co. (Corbin colly).	Furnace Coal Co.
1911.							
January	84,188.19	18,173.12	30,349.05	10,270.13	8,335.17	14,128.05	2,931.07
February	74,470.19	18,425.12	26,705.00	8,269.08	7,421.01	10,413.18	3,236.00
March	70,014.05	21,252.13	14,550.04	9,045.03	9,561.15	11,216.14	4,387.16
April	61,560.05	19,036.06	11,133.14	7,655.07	7,866.19	13,018.18	2,789.01
May	61,378.03	21,270.15	6,362.17	9,014.01	7,866.10	14,425.14	2,338.06
June	54,133.19	17,469.05	.....	10,169.08	8,971.17	14,955.02	2,568.07
July	40,812.08	10,097.19	1,530.10	8,019.12	7,295.10	12,238.15	1,630.02
August	55,709.18	11,783.07	21,206.13	5,891.11	7,580.09	9,248.07	.....
September	66,867.06	16,446.05	24,498.19	8,205.13	9,194.02	3,522.07	.....
October	72,054.09	17,473.17	23,185.11	9,453.01	8,611.01	14,330.10	.....
November	64,759.03	17,031.11	19,848.01	6,085.11	7,582.06	14,211.14	.....
December	70,356.16	17,050.04	21,740.12	9,462.18	8,446.17	13,656.05	.....
	777,246.01	205,511.06	201,211.06	101,542.06	93,733.15	150,366.09	19,880.19

FROM WHOM PURCHASED.

Month.	Total tonnage purchased.	Enterprise Coal Co.	St. Clair Coal Co.	Pine Hill Coal Co.	Maderia Hill & Co.	Thorne, Neale & Co. (Inc).	Norton Co. C. D.	Weston Dodson & Co.
1913.								
January	29,755.07	19,110.19	2,867.09	7,776.19				
February	23,086.08	15,648.09		7,437.19				
March	26,297.06	17,195.07	2,122.18	6,979.01				
April	27,056.16	13,267.06	4,562.04	7,739.11	1,487.15			
May	26,399.16	14,162.01	5,155.04	7,082.11				
June	23,285.17	10,871.00	4,544.16	7,870.01				
July	17,860.01	9,054.17	3,709.17	5,095.07				
August	15,298.07	7,524.09	3,332.15	4,441.03				
September	17,599.19	9,000.17	4,124.03	4,474.19				
October	21,039.09	8,693.02	5,246.03	7,160.04				
November	18,439.06	6,507.02	4,785.17	7,146.07				
December	20,675.10	6,041.13	4,634.15	5,156.15	1,593.10	535.08	362.03	2,351.06
	266,794.02	136,987.02	45,086.01	78,390.17	3,081.05	535.08	362.03	2,351.06

691 Government's counsel also offered in evidence statement produced by Mr. Heebner, made by the Philadelphia and Reading Coal and Iron Company, of the total tons of anthracite coal sold, and points of distribution by rail and water, for calendar year ended December 31, 1898 (marked "**Exhibit No. 64**"), as follows:

THE PHILADELPHIA AND READING COAL AND IRON COMPANY.

Total tons of anthracite coal sold, and points of distribution by rail and water, for calendar year ended December 31, 1898.

Points of distribution.	By rail to tidewater for transshipment.	Tidewater distribution.	All-rail distribution.	Total tonnage.
Port Richmond, Phila	1,096,600			
Port Reading, New York Harbor	986,677			
Port Liberty, New York Harbor	129,126			
Locust Point, Baltimore	57,149			
Canton piers, Baltimore	12,576			
Taken from stock	63,210			
Total	2,345,338			
Canada Provinces		6,424		6,424
Portland, Maine		93,058		93,058
Portsmouth, N. H		49,373		49,373
Hartford, Conn		13,378		13,378
Boston, Mass		433,897		433,897
New England States		784,975	108,400	893,375
New York		786,826	87,552	874,378
Philadelphia, Pa		70,619	1,534,431	1,605,050
692 Baltimore and Washington		38,908	420,035	458,943
Charleston, S. C		14,148		14,148
New Orleans, La		2,513		2,513
Galveston, Tex		7,836		7,836
Southern points		38,749	117,248	155,997
West Indies and Mexico		4,634		4,634
P. & R. Railway, supply			541,739	541,739
P. & R. System, less Philada			1,516,345	1,516,345
Local points, other railroads			26,230	26,230
N. Y. C. & H. R., Buffalo and East			134,910	134,910
R. W. & O., Buffalo and East			26,527	26,527
B. R. & P., Buffalo and East			4,632	4,632
Erie, Buffalo and East			132,853	132,853
W. N. Y. & P., Buffalo and East			2,762	2,762
B. & O., Buffalo and East			16,575	16,575
West of Buffalo			206,278	206,278
Canada			25,532	25,532
Western yards, rail and lake:				
Illinois—Chicago	240,158			
Wisconsin—				
Milwaukee	81,810			
W. Superior	30,943			
Minnesota—				
Minneapolis	16,445			
Duluth	9,849			
St. Paul	12,814			392,019
Total	392,019	2,345,338	4,902,049	7,639,406

Government's counsel also offered in evidence statement produced 693
by Mr. Heebner, made by the Philadelphia and Reading Coal and Iron Company, of the total tons of anthracite coal sold, and points of distribution by rail and water, for calendar year ended December 31, 1905 (marked "**Exhibit No. 65**"), as follows:

THE PHILADELPHIA AND READING COAL AND IRON COMPANY. 694

Total tons of anthracite coal sold, and points of distribution by rail and water, for calendar year ended December 31st, 1905.

Points of distribution.	By rail to tidewater for transshipment.	Tidewater distribution.	All-rail distribution.	Total tonnage.	
Pt. Richmond, Philada	1,540,406				
Pt. Reading, N. Y. Harbor	1,406,653				
Pt. Liberty, N. Y. Harbor	54,534				
Locust Point, Baltimore	55,916				
Taken from stock	50,905				
Total	3,108,414				
Canada Provinces		21,902		21,902	
Portland, Maine		115,597		115,597	
Portsmouth, N. H		53,778		53,778	
Hartford, Conn		35,752	9,059	44,811	
Boston, Mass		356,789	103	356,892	
New England States		1,026,462	123,238	1,149,700	
New York		1,170,509	101,153	1,271,662	
Newark, N. J		12,544		12,544	
Philadelphia, Pa		61,472	1,771,556	1,833,028	
Baltimore and Washington		99,163	454,742	553,905	
Charleston, S. C		16,760		16,760	
New Orleans, La		17,496		17,496	
Galveston, Texas		13,744		13,744	
Southern Points		85,033	255,376	340,409	
Cuba, etc		21,413		21,413	695
P. & R., supply			1,166,750	1,666,750	
P. & R. system, less Phila			2,341,190	2,341,190	
Local points, other railroads			49,903	49,903	
N. Y. C. & H. R., Buffalo and East			211,505	211,505	
R. W. & O., Buffalo and East			33,591	33,591	
B. R. & P., Buffalo and East			9,700	9,700	
Penna. R. R., west via Hbg. & Milton			348,266	348,266	
N. Y. C. & B. & O. w. of Buffalo:					
Ohio			80,269		
Indiana			50,641		
Michigan			130,512	261,422	
Canada, west			114,819		
Canada, east			20,274	135,093	
Western yards, rail and lake:					
Points in Indiana	5,889				
Illinois—					
Chicago	79,699				
Other points	138,750				
Wisconsin—					
Milwaukee	24,761				
Superior	8,795				
Other points	16,273				
Minnesota—					
Minneapolis	27,771				
St. Paul	25,380				
Other points	9,156				696
West., N. W., & So. W. States	91,228			427,702	
Western points by lake:					
Ohio	677				
Michigan	54,407				
Illinois	9,042				
Wisconsin	7,507				
Canada, West	5,644			77,277	
Geneva and Erie Canal	7,796			7,796	
Total	512,775	3,108,414	7,272,647	10,893,836	

697 **Government's counsel also offered in evidence statement produced by Mr. Heebner made by the Philadelphia and Reading Coal and Iron Company of the total tons of anthracite coal sold, and points of distribution by rail and water, for calendar year ended December 31, 1913 (marked "Exhibit No. 66"), and is as follows:**

THE PHILADELPHIA AND READING COAL AND IRON COMPANY.

Total tons of anthracite coal sold, and points of distribution by rail and water, for calendar year ended December 31, 1913.

	Points of distribution.	By rail to tidewater for transshipment.	Tidewater distribution.	All-rail distribution.	Total tonnage.
	Port Richmond, Phila.	1,623,390			
	Port Reading, New York Harbor	1,064,797			
	Locust Point, Baltimore	33,186			
	Added to stock	183,187			
	Total	2,538,156			
	Canada Provinces		10,876		10,876
	Portland, Maine		164,996		164,996
	Portsmouth, New Hampshire		71,520		71,520
	Hartford, Conn.		32,049	21,593	53,642
	Boston, Mass.		301,412	9,213	310,625
	New England States		921,133	248,329	1,169,462
	New York		713,855	197,408	911,263
698	Philadelphia, Pa.		97,299	931,360	1,028,659
	Baltimore and Washington		107,551	363,290	470,841
	Charleston, S. C.		30,637		30,637
	New Orleans, La.		12,464		12,464
	Galveston, Tex.		12,714		12,714
	Southern points		31,628	241,573	273,201
	Cuba, etc.		30,022		30,022
	P. & R., supply			1,577,681	1,577,681
	P. & R. system, less Philada.			1,795,538	1,795,538
	Local points, other railroad			24,993	24,993
	N. Y. C. & H. R., Buffalo and East			208,035	208,035
	N. Y. C. & B. & O., west of Buffalo:				
	Ohio			98,440	
	Indiana			45,595	
	Michigan			109,002	
	Canada, west			79,655	
	Canada, east			41,995	374,687
	Western yards, rail and lake:				
	Points in Indiana	13,972			
	Illinois—				
	Chicago	128,776			
	Other points	131,801			
	Wisconsin—				
	Milwaukee	9,617			
	Superior	12,942			
	Other points	12,717			
699	Minnesota—				
	Minneapolis	35,994			
	St. Paul	17,201			
	Other points	15,049			
	West., N.W., & S.W. States	80,893			458,952
	Western points by lake:				
	Michigan	24,749			
	Wisconsin	30,889			
	Canada, west	65,669			121,307
	Geneva and Erie Canal	3,600			3,600
	Total	583,859	2,538,156	5,993,700	9,115,715

700 Mr. KINGSBURY. In the proceeding before the Interstate Commerce Commission, docket No. 4914, page 706 of the minutes, I find the following statement by Mr. Reynolds, in answer to the question by Mr. Hickey. Are you willing to make the same statement of record here?

"Mr. HICKEY. Do we understand that previous to December 6 (1912) that the Lehigh and Wilkes-Barre Coal Company sent telegrams free over the wires of the Central Railroad Company of New Jersey?

"Mr. REYNOLDS. That is correct."

Mr. REYNOLDS. That is correct. Since that date they have not.

Mr. KINGSBURY. I also find in the same record, at page 766 of the stenographer's minutes, a quotation from Central Railroad Company of New Jersey I. C. C. A. No. 90, as follows:

In compliance with the tenth covenant of the lease from the Lehigh Coal and Navigation Company, under which the Central Railroad Company of New Jersey operates the Lehigh and Susquehanna Railroad, a lateral allowance is made out of herein-named rates to the Lehigh Coal and Naviagation Company on all anthracite coal originating on the latter's track in the Panther Creek, Nesquehoning, and Hacklebarnie districts mined and shipped by it when coming via Hauto and Nesquehoning and Mauch Chunk gateways.

The covenant referred to is set forth in the lease of March 31, 1871, 701
and recorded in Deed Book No. 262, page 480, of Luzerne County, and Deed Book No. 43, page 339, of Lackawanna County, Pennsylvania.

Is it admitted that that is a correct quotation from the tariff?

Mr. REYNOLDS. That is admitted.

Mr. KINGSBURY. On page 916, I read the following statement by Mr. Reynolds:

In answer to Mr Hickey's question up to and including part of August, 1912, the Central Railroad Company of New Jersey owned and operated seagoing tugs and barges carrying coal between Port Johnson, New Jersey, and New England ports, such as Boston. On August 7, 1912, an arrangement was made by which the fleet was to be leased, with the option to buy, to the Lehigh and Wilkes-Barre Coal Company. It was agreed that an immediate transfer be made to the Lehigh and Wilkes-Barre Coal Company, and that the latter should take physical possession of the tugs and barges without waiting final execution of the papers. The Lehigh and Wilkes-Barre Coal Company on August 13 exercised the above option and purchased the fleet, paying two hundred thousand dollars on account of the purchase price. Bills of sale were executed October 4, 1912, for each of the vessels, and those bills of sale are all on record in the customshouse in New York. On October 1st, 1912, the Lehigh and Wilkes-Barre Coal Company published a notice of its taking over full operation of the boats, and paid the balance of the purchase price, which purchase price 702
was reached on an arbitration appraisal in the usual form of each side choosing an appraiser, and they choosing a third. Prior to that time coal was carried on these barges for the Lehigh and Wilkes-Barre Coal Company, but no tariff rate for the carriage of that coal was in effect.

Mr. REYNOLDS. The same admission is made in this regard.

Mr. KINGSBURY. At page 1002 of the same proceeding there is a statement that the balance due to the Reading Company from the Philadelphia and Reading Coal and Iron Company on October 17,

1913, was the sum of $74,980,171.62. I read the following question and answer from the record in the proceeding:

"Mr. HICKEY. Is the Philadelphia and Reading Coal and Iron Company indebted to the Reading Company for upwards of seventy millions of dollars?

"Mr. WHITE. Yes.

"Mr. HICKEY. Does this document show the exact amount on October 17, 1913 [paper handed witness]?

"Mr. WHITE. Have you got an annual report here?

"Mr. HICKEY. What date?

"Mr. WHITE. January 30, 1896?

"Mr. HICKEY. My question was: Does that document show the exact amount of that indebtedness on October 17, 1913?

"Mr. WHITE. Yes, that is right. Is that your mark on the corner there, Mr. Heebner [indicating]?

"Mr. HEEBNER. What is this?

703 "Mr. HICKEY. A document produced under subpœna. The question was: Does that document show the exact amount of that indebtedness on October 17, 1913?

"Mr. HEEBNER. As it appears upon the books?

"Mr. WHITE. Yes. That is your mark on the corner?

"Mr. HEEBNER. You mean as it appears upon the books?

"Mr. WHITE. Yes.

"Mr. HICKEY. Is that amount $74,980,171.62?

"Mr. WHITE. $74,980,171.62."

Adjourned until Monday, March 2, 1914, at 11 o'clock a. m.

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704 MARCH 2, 1914.

Met pursuant to adjournment.

Present: Mr. Frederic R. Coudert, Mr. Thurlow M. Gordon, and Mr. Howard Thayer Kingsbury, for the Government; Mr. Jackson E. Reynolds, for the Phila. & Reading Ry. Co., Phila. & Reading Coal & Iron Co., Reading Company, Central Railroad Co. of New Jersey, Lehigh & Wilkes-Barre Coal Co.

By Mr. REYNOLDS. Counsel for the other defendants by telephone consented to proceeding in this manner provided full reservation in their favor as to the admissibility of the evidence is noted on the record, such objections to be on any available ground.

Mr. KINGSBURY. Counsel for the Government have no objection to such reservation.

Mr. Heilner being called, testified as follows:

By Mr. KINGSBURY:

Q. Will you give your full name, please?

A. Percival D. Heilner.

Q. What is your official position, Mr. Heilner?

A. Vice president and general agent.

Q. Of the Lehigh & Wilkes-Barre Coal Co.?

A. Yes, sir.

Q. Do you hold any office in the Phila. & Reading Railroad Co. or Phila. & Reading Coal & Iron Co.?

A. No, sir. 705

Q. What in general are your official functions, Mr. Heilner?

A. Well, to market the coal in such a way that I can get the money for it.

Q. Are you the head of the coal-selling department of the company?

A. Well, yes.

Q. What methods do you employ in finding a market for your company's coal?

A. What do you mean by methods, Mr. Kingsbury?

Q. Well, how do you go about it? Do you send out advertisements, or do you send circulars to different coal dealers; do you employ a field force to solicit orders, or what do you do?

A. Well, I have been in this market for a good many years; my acquaintance is large among the buyers, and I know them all very well, and I see them, talk to them, extol the virtues of our coal, our service, and as a consequence the business comes.

Q. In what markets is the coal principally sold?

A. Well, New York is, of course—perhaps our largest market, New York City, New England all rail, Boston by water. Occasionally we go as far as Portland, Maine.

Q. Does any of your coal go to Philadelphia?

A. No, sir.

Q. Does all of your coal go over the Jersey Central Railroad?

A. It originates on the Jersey Central—starts from there. 706

Q. And all of it that comes to New York goes over the Jersey Central?

A. Yes, sir.

Q. I show you a price circular, furnished to me by counsel for your company, of September 1st, 1913, showing prices at New England points, and ask you if that is correct?

A. Yes, sir; as far as I recollect it, that is correct.

Q. Do you have any printed price circulars?

A. No, sir.

Q. None for any of your points of distribution?

A. We have none that emanate from my office. The lineman at Elizabeth issues a circular of his own—that is, under his own signature—simply to send around to the small dealers on the line. That is the only circular we ever issue.

Mr. Reynolds. And the Newark——

A. Well, that is another man.

Q. Well, how are your prices fixed? Do you issue instructions to your various subordinates as to the prices to be charged at the various points?

A. Well, I consult with Mr. Baer at times as to the various prices, and then I notify these people that buy from us what the prices are.

707 Q. Do you personally make up various schedules?

A. For prices at the various points of distribution—after consulting with Mr. Baer, early in the spring—it works along according to these prices that you have, right along through the season as a rule.

Q. What I am getting at is this: Do you at any certain time in each year make up a schedule of prices—for example, for coal to be sold in New York—and communicate that schedule to your local representatives in New York?

A. Well, the prices are made in the spring, in April as a rule, and, of course, I notify these different people of the prices we have made.

Q. Whom do you notify?

A. Well, I notify all our customers to begin with, and, of course, first I notify our own people; that is, this lineman that I have spoken of and our man here in Boston.

Q. You say you fix your prices after consulting with Mr. Baer?

A. Yes.

Q. Does he ultimately determine the price that you are to charge, or do you fix it and simply take his views into consideration?

A. Sometimes we do not agree as to our views, and I think at times I can get more money for coal than he wants me to ask.

Q. Which controls in such a division of opinion?

A. Mr. Baer is the president.

708 Q. So that if you advocate one price and he advocates another, and after discussion you do not reach an actual agreement, the price he fixes is the one that is issued officially as the price to be charged?

A. Yes; after consulting with him, he decides whether he is correct or whether he will take my view or not.

Q. Can you state either from memory or from any records what your New York prices for the four sizes stated in your New England price list were on this same date, September 1, 1913?

A. You mean, Mr. Kingsbury, on board the vessel at Port Johnson, as that coal is all carried down by water?

Q. Well, how do you state your prices, as on board vessel or as delivered in New York?

A. The water-borne coal, we state the price on board.

Q. That is for coal that is going to New England by water?

A. Yes; any part, or to New York either, any water port.

Q. Can you give me those prices?

A. In September, 1913?

Q. Yes.

A. The four sizes you mean are——

Q. Broken, egg, and stove, chestnut, and pea.

A. Well, now in September last, the broken coal was—let me give you the egg, stove, chestnut, and pea first. Egg and stove in September was $5.20 at Port Johnson, delivered on boats; chestnut was 25 cents per ton more; and pea coal was $3.45 per gross ton. 709

Q. That is, tons of 2,240 pounds?

A. Yes. Now, the broken coal is a coal that is sold, most of it, on contracts, as is pea coal, too. Broken coal in September was—well, the contract price of broken coal in September was $4.50 to $4.55. The circular price was higher.

Q. What was the circular price?

A. Well, I think the circular price was $4.75. I am not quite sure on that, Mr. Kingsbury, because most of our broken coal is disposed of early in the season on the contract price.

Q. When you say contract price, you mean that you agree with a given customer to deliver a certain amount of coal during a year at a certain fixed price, irrespective of variations from month to month?

A. That is it.

Mr. COUDERT. And different from the circular price?

A. Well, yes, sir.

Q. Will you explain that system of dealing a little more fully?

A. Our largest customers for broken coal here are the gas companies, and necessarily they want a price for the season, and we sell them so many thousand tons per year, delivered in equal monthly quotas, at a contract price. They are manufacturers, and I suppose they want to know what the stuff is to cost them.

Q. And is each contract the result of special negotiations with the 710 customer, or do you have a uniform contract price for all who buy in that way?

A. Well, we have what we call a contract price.

Q. And you get it when you can?

A. Oh, well, I get it, or I do not sell it.

Q. Do you sell a large amount of your coal to Burns Brothers?

A. Well, yes; they are very large customers of ours.

Q. Do you know about how much they take in a year?

A. Well, I could not tell you—you mean at all points, at all their yards?

Q. At all their yards.

A. Well, I can not tell you exactly, Mr. Kingsbury, but I should say 500,000 or 600,000 tons.

Q. Do you sell that to them on contract or at varying prices?

A. On our regular prices.

Q. When you speak of regular price, does that mean the same as when you speak of circular prices? You mentioned circular prices a while ago.

A. Yes, sir.

Q. Do you issue typewritten circulars or written circulars to your agents?

A. No, sir.

Q. That is simply a matter of private communication to them?

711 A. Yes.

Q. Is the coal that is sold to Burns Brothers sold on the "delivered on board vessels" basis?

A. Delivered on board vessels at our regular monthly price at Port Johnston.

Q. You stated that you fixed the prices ordinarily in the spring of each year, did you not?

A. Yes, after consultation.

Q. That is, there are monthly reductions in price during the summer?

A. There is a monthly reduction in the 50 cts.—it is 50 cts. less on April 1st than it was on September 1st, and then that in the next month is 40 cts., and so on down until the following September.

Q. Does the price run the same from year to year?

A. Well, no, sir; that depends. You mean regularly every year from year to year?

Q. Was the price in September, 1913, the same as the price in September, 1912?

A. I think it was.

Q. And the same as in September, 1911?

A. No; I think not. I think some sizes were less in 1911.

Q. Some sizes less in 1911?

A. I think so. I can not remember all these details. That is my impression.

Q. What I am trying to get at is the general course of prices.

712 Coal has risen somewhat in price, has it not, in the last ten years?

A. Oh, yes; brought about by increased wages that came after long, tiresome, and expensive strikes at the mines. We had to make quite a radical increase in wages.

Q. How much has this increase in price amounted to within the past ten years?

A. Well, really, Mr. Kingsbury, I can not tell you that accurately. It has been so long—I could not answer that question intelligently right off the bat.

Q. Do you know the highest price at which egg and stove coal has sold at any time within the last ten years? Your coal and at what points? I will limit my question to New York.

A. Well, I can only say as I did before, ten years ago is a long time, and I do not know. We are getting more money for some sizes than we did ten years ago.

Q. But you do not know how much more, whether it is 50 cts. or 25 cts. a ton?

A. I do not think it is 50 cts.

Q. Can you answer the question for the last five years, Mr. Heilner?

A. Not accurately, Mr. Kingsbury, because—I could have prepared myself. This question of price depends very much upon the market. If I was a free agent to get what some of my competitors, the individuals, get for their coal at times, I could net very much more. Last spring some of these individual miners were getting $1.50 a ton more for coal than Mr. Baer would allow me to ask, and you will pardon me if I say that, while I have not got the big head 713
as to my ability as a salesman, if I could not get as much money for coal as they can, I would resign, but he won't allow it.

Q. When you speak of these independent miners, whom do you mean?

A. I mean all of them; that is, all the miners who sell their own coal.

Q. That is, other than the so-called railroad coal companies?

A. Other than the so-called railroads.

Q. These high prices were obtained by the independents so-called during strike times?

A. No. We had a strike in 1912 but we had none in 1913, and it came about by the natural demands for coal—cold weather, we had a cold winter.

Q. Was there something of a coal famine?

A. I do not think so. We had the strike in 1912 for two months which depleted the stocks and immediately they take advantage of it. It is a sore point with me that I can not take it, too; might just as well get it.

Q. Can you prepare a statement of the prices as fixed by you for your company's coal to be sold at New York tidewater for the last seven years?

A. We can furnish you the prices at which our coal was sold for that time during that period.

Mr. COUDERT. It was sold at the prices you fixed? 714

A. Sold at the prices I fixed.

Q. Was it part of your functions to keep track of the prices that are charged by other coal companies?

A. Well, I do not keep any particular track, but I hear them from people who buy from me, who come to my office and tell me the prices they can buy coal at.

Q. You say your prices are lower at times than those of the so-called independents. Do you know how they compare with the prices, for example, of the Phila. & Reading Coal & Iron Co.'s coal at New York tidewater?

A. No, sir. I know only the matters pertaining to my own company—the Lehigh & Wilkes-Barre Coal Co.

Q. But don't you know what prices coal is commanding in the market generally aside from the independent miners?

A. Well, yes; I know in a general way, just as I told you.

Q. Well, then, aren't you in the way of knowing whether the Reading Company's coal is being sold higher or lower than yours at a given time or at substantially the same price?

A. Well, I have a suspicion that at times some of it is sold lower.

Q. But it is generally sold at the same price?

A. So far as I know.

Q. How about the other so-called railroad's coal, is that sold at substantially the same price as yours, or at a lower price?

715 A. All I can say, the only way I can answer that, Mr. Kingsbury, is to say that I get my information, you might say, second hand from some of our buyers, and that some of them, I am of the opinion—strongly of the opinion—that some of them are not getting as much for coal as we are.

Q. But in general all the different railroad companies' coal sells for about the same price, does it not?

A. Well, as far as I hear, every now and then somebody is selling coal at a different price, but I do not pay any attention to it. That is an unusual condition.

Q. That is an unusual condition, an exceptional condition?

A. Well, that depends, too, on how some of them are pushed—how they want to move their coal.

Mr. COUDERT. Don't you see the price lists of other coal companies?

A. Well, yes; sometimes they mail me one, but I tell you, Mr. Coudert, that does not always mean just what they are getting.

Mr. COUDERT. Don't you receive information from the bureau of anthracite statistics?

A. Well, I get their statement as to tonnage; that is all I get from the bureau of anthracite statistics. I do not know who is at the head of it now.

Mr. KINGSBURY. Mr. Ruley?

716 A. Yes.

Q. What do you get from it?

A. I simply get the tonnage that is carried by the other roads.

Q. Does that not also show the prices as a basis of fixing the miners' wages?

A. I can say for myself that I have nothing to do with the fixing of the wages—I know nothing about it.

Q. Just what do you get from the Anthracite Bureau, Mr. Heilner?

A. As I told you, I get the tonnage on the various roads.

Q. Without any statement of prices whatever?

A. Without any statement of prices or any division of where the coal comes from—whether it comes on the Central from the Lehigh & Wilkes-Barre or any other shipper on that road.

Mr. COUDERT. What use do you make of that information?

A. This anthracite information?

Q. Yes.

A. It is no particular use to me except general information as to what the other roads are doing.

Q. Does it aid you in any way in fixing prices?

A. No, sir.

Q. What elements do you consider in fixing the prices for your coal?

A. Elements? 717

Q. What other factors do you take into consideration in order to reach what you think a proper price to put on your coal?

A. Well, I want to sell my coal—I want to be able to move it promptly as it is mined, and necessarily I like to get a good, fair remunerative price for it.

Q. In other words, what the traffic will bear?

A. Well, no; I would like to, but as I said a while ago, there are many times that I can get more money for my coal than Mr. Baer will allow me to take. We are coal merchants and not speculators.

Q. And he tells you it is too high, and he lowers it?

A. I do not quite get that,

Q. You endeavor to fix a rate, and he tells you that it is too high, and he lowers it?

A. Well, in this instance to which I refer here, I tell him that it hurts my pride to see these people getting $1.50 more for coal than I get, and selling lots of it, too.

Q. And what does he say to that?

A. He does not say much of anything. I know enough to go on as I have been doing.

Q. What I want to get at is: When you come to fix a price for coal, you must take into consideration certain things, and before you submit that price to Mr. Baer, now, what are the things that you consider?

A. Well——

Q. Production, scarcity, freight rates, what? 718

A. Well, I have to consider the condition of the market, the—well, I do not know how to say it better than the condition of the market as

it looks to me, but as I have said two or three times, we do not agree always as to what I think I can get for coal, because I am sure that I could at times get more.

Q. And Mr. Baer does not think so?

A. I do not know what he thinks about it. He does not agree with me that——

Q. Well, he thinks your rate is too high; that is what you mean, isn't it?

A. Well, I do not know that he does. He doesn't allow me to speculate on the public. I might—well, never mind, I won't say any more.

Mr. KINGSBURY. I offer in evidence the statement of New England prices, identified by the witness, and the same is to be spread at length upon the record.

SEPTEMBER 1ST, 1913.

Prices at Boston agency.

On cars, Salem:	
Broken	$6.00
Egg and stove	6.25
Chest	6.50
Pea	4.50
On teams, Salem (except E. H. Knight & Co.):	
Broken	6.10
719 Egg and stove	6.35
Chest	6.60
Pea	4.50
E. H. Knight & Co., contract—	
Broken	5.45
Egg and stove	6.20
Chest	6.45
Pea	4.50
On teams, Charlestown:	
Broken	$6.10
Egg and stove	6.35
Chest	6.60
Pea	4.50
On teams, Lawrence:	
Broken	7.15
Egg and stove	7.40
Chest	7.65
Pea	5.40
On teams, Lowell:	
Broken	6.95
Egg and stove	7.20
Chest	7.45
Pea	5.40

APRIL 1ST, 1913.

Prices at Boston agency.

On cars, Salem:	
Broken	$5.50
Egg and stove	5.75
Chest	6.00
Pea	4.50
On teams, Salem (except E. H. Knight & Co.):	
Broken	5.60
Egg and stove	5.85
Chest	6.10
720 Pea	4.50
E. H. Knight & Co., contract—	
Broken	5.45
Egg and stove	5.70
Chest	5.95
Pea	4.50
On teams, Charlestown:	
Broken	$5.60
Egg and stove	5.85
Chest	6.10
Pea	4.50
On teams, Lawrence:	
Broken	6.35
Egg and stove	6.60
Chest	6.85
Pea	5.40
On teams, Lowell:	
Broken	6.35
Egg and stove	6.60
Chest	6.85
Pea	5.40

(Above statement received in evidence and marked "Plaintiff's Exhibit No. 67," March 2, 1914.)

721 Mr. KINGSBURY: I think that is all, Mr. Heilner, as far as the Government is concerned.

No cross-examination.

Mr. JOHNSON took the witness chair.

By Mr. KINGSBURY:

Q. Will you give your full name?

A. Warren C. Johnson, comptroller Lehigh & Wilkes-Barre Coal Co., Philadelphia.

Q. What is the nature of your functions as comptroller?

A. I have charge of the books and accounts, payments and disbursements, collections, receipts, income, &c.

Q. What have you to do, if anything, with the fixing of prices for the coal?

A. Nothing.

Q. Nothing?

A. Nothing. I bill out the coal from the prices furnished by the sales department.

Q. You, therefore, know in that way what prices have actually been realized for the coal at different points?

722

A. Yes, sir.

Q. Have you prepared any statement showing the prices realized at any particular time?

A. These are the prices covering the year of 1913 at certain points—tidewater.

Q. This is a statement of the prices actually realized in the year 1913 at the various points mentioned in the statement?

A. Yes, sir.

Mr. KINGSBURY. I offer this statement in evidence to be spread on the record:

Lehigh & Wilkes-Barre Coal Company prices for year 1913.

	Broken.	Broken, contracts.	Egg.	Stove.	Chest.	Pea.	Buck No. 1.	Buck No. 2.	Buck No. 3.
A—Jersey City:									
Wilkes-Barre	$5.00	$4.50	$5.25	$5.25	$5.50	$3.50	$2.75	$2.25	$1.75
Plymouth	5.10	4.60	5.35	5.35	5.60	3.50	2.75	2.25	1.75
Honey Brook	5.00	4.50	5.25	5.25	5.50	3.50	2.75	2.25	1.75
B—F. o. b. tidewater:									
Wilkes-Barre	4.95	4.45	5.20	5.20	5.45	3.45	2.70	2.20	1.70
Plymouth	5.05	4.55	5.30	5.30	5.55	3.55	2.70	2.20	1.70
Honey Brook	4.95	4.45	5.20	5.20	5.45	3.45	2.70	2.20	1.70
C & D.—New England, all rail:									
Wilkes-Barre	3.45	2.95	3.70	3.70	3.95	2.10	1.50	1.15	.65
Plymouth	3.55	3.05	3.80	3.80	4.05	2.20	1.50	1.15	.65
Honey Brook	3.45	2.95	3.70	3.70	3.95	2.10	1.50	1.15	.65

A—On cars at destination, Jersey City.
B—On vessels at tidewater, Port Johnston.
C—Reduction of 20c. per ton from these prices for egg, stove, and chest. sizes to certain points via Albany.
D—On cars at mines; freight rates to be added to destinations.

723

From the above prices a reduction is made on broken (except on contracts) egg, stove, and chest. of: 50 cts. per ton April 1st, 40 cts. per ton May 1st, 30 cts. per ton June 1st, 20 cts. per ton July 1st, 10 cts. per ton August 1st.

(Above statement received in evidence and marked "**Plaintiff's Exhibit No. 68,**" March 2, 1914.)

Q. Do you happen to remember how these prices compare with the prices for the past few years?

A. Well, they are about the same, although in one or two sizes they are a little higher.

Q. Than they were in 1912?

A. Two or three years ago on some sizes.

Q. In which sizes has there been a change?

A. Mostly the small sizes, buckwheat.

Q. Has there been any substantial change in the domestic sizes so-called in the last several years?

A. If you go back ten or fifteen years, there has been, on account of the strikes, increase of wages; that was some time back.

Q. Do you remember when, about, the substantial change occurred in domestic sizes?

724 A. My impression is that it was after the last strike. There was an increase in wages in 1912. The wages were increased ten per cent or something of that kind and there was a slight advance.

Q. Prior to that, when was the last substantial increase?

A. I do not think there was anything back of 1902, which was the big strike. Then there was a big advance.

Q. So that the price has been substantially uniform from 1902 to 1912 for your company's coal?

A. With the possible exception of some increase in the steam sizes, buckwheats.

Q. They are the very small sizes?

A. Very small sizes; and the demand for those sizes was somewhat increased in excess of the output or production.

Q. Do you know anything about the prices realized by other coal companies for their coal?

A. Absolutely nothing.

Q. That does not come within your scope?

A. I am not interested except through curiosity as to whether they get as much as we do or not.

Q. And that you do not know?

A. That I do not know.

By Mr. REYNOLDS:

Q. Have you any connection whatever with the Central Railroad Co?

A. Absolutely none.

725 Q. Have you ever had?

A. Never.

By Mr. KINGSBURY. Supplementing the statement made on the record by Mr. Reynolds at the last session, I read in evidence a memorandum in regard to the Central Railroad Company's leases, which were produced at that time, and which has been examined by Mr. Reynolds.

It is understood that this supplements the statement as respects leases containing such covenants made by Mr. Reynolds, but does not question or modify the statement as to the leases which did not contain such covenants.

UNITED STATES VS. READING COMPANY.

Memorandum re C. R. R. leases.

The following leases contain this shipping covenant:

> That all coal shipped to or from said demised premises and handled thereon and thereat shall be shipped over the railroad lines of the party of the first part and their connections.

C. R. R. of N. J. to Arctic Ice & Milk Co., lease dated Feb. 1st, 1912, two coal bins at Bridgeton, rent $50 per year.

C. R. R. of N. J. to C. F. Booblitz, lease dated Feb. 1st, 1912, five coal bins at Bridgeton, rent $125 per year.

C. R. R. of N. J. to C. R. Kandle, one year from Feb. 1st, 1912, five coal bins at Bridgeton, $125.

C. R. R. of N. J. to C. R. Chamless, one year from Feb. 1st, 1912, seven coal bins at Pridgeton, $175.

Lease C. R. R. of N. J. to R. C. Boise Co., five years from April 1st, 1911, property at Newark, $1,000 per annum, contains this covenant: 726

> That the party of the second part will transport over the railroad lines of the party of the first part all coal destined to said premises.

Lease C. R. R. of N. J. to Lehigh Coal & Navigation Co., five years from July 1st, 1911, with five years renewal, coal trestle and siding at Phillipsburg: $400 for 1st year; $500 next four years; $520 last five years, and 10c. per ton for all coal in excess of 5,200 tons per annum; contains this covenant:

> That all coal shipped to or from said demised premises and handled thereat shall be shipped over the railroad lines of the lessor.

Lease C. R. R. of N. J. to Dunellen Coal & Supply Co., one year from April 1st, 1909, land with coal trestle at Dunellen $600 per year and 10c. per ton on all in excess of 6,000 tons per year contains this covenant:

> That it (the party of the first part) will ship to said trestle not less than 6,000 tons of coal in each and every year during the term hereby created and that all coal consigned or shipped to it to be dumped on said trestle shall be transported over the railroad lines of the party of the first part.

C. R. R. to John C. Roche, one year from June 1st, 1909, coal pockets, etc., at Flemington, 10c. per ton with guarantee of $250 per year contains this covenant:

> That he (the party of the second part) will ship to said trestle not less than 2,500 tons of coal in each and every year during the term hereby created and that all coal consigned or shipped to him to be dumped on said trestle shall be transported over the railroad lines of the party of the first part.

727 C. R. R. to David Rockafeller, one year from December 1st, 1895, and thereafter from year to year, eight coal pockets at Lebanon, N. J., 10c. per ton, with guarantee of $100 per year, contains this covenant:

> The party of the second part hereby agrees that all coal consigned to or dumped upon said demised premises shall be shipped over the lines of the party of the first part, except in the event of coal purchased from parties not on the lines of the party of the first part, in which event such coal shall be delivered to the party of the first part at its nearest connecting point.

Substantially similar covenant in C. R. R. of N. J. to Hauch Bros., one year from October 1st, 1894, and thereafter from year to year, eight coal pockets at Jersey City, N. J., 10c. per ton, with guarantee of $300 per year.

C. R. R. of N. J. to George Weidenmayer, license for coal chutes at Newark, contains the following covenant:

> All freight or coal which the party of the second part has to offer for shipment from or which is to be received at said siding and trestle, so far as the party of the second part can control the routing thereof to or from points on or reached via the lines of the party of the first part, shall be shipped over such lines and their connections whenever the rates charged for such service shall not exceed those charged to others for a generally similar service, and whenever such rates shall not exceed the rates charged by other railroad companies for like transportation between the same points.

C. R. R. of N. J. to North River Coal & Wharf Company property at Jersey City, twenty years from September 1st, 1905, $6,000 per year, plus a graduated price per ton dependent on amount of tonnage, contains the following covenant:

> And the said lessee, for itself, its successors and assigns, further covenants and agrees as a part of the consideration hereof, that no coke or anthracite or bituminous coal shall be delivered to or shipped from said demised premises during the continuance of the term hereby granted unless the same shall have been transported over the lines operated by the lessor, the privilege of shipping coal or coke at the pier or piers on said demised premises being granted to the lessee only for coal
> 728 and coke so transported, and that it, said lessee, will, to the extent of its power and control, direct the shipments of bituminous coal and coke by way of Haucks Switch, Allentown and Buttonwood, Pennsylvania, and thence over the lines operated by the said lessor, to the end that it, said lessor, may receive the longest possible haul and the greatest possible transportation charge thereon, it being understood and agreed, however, that the rates (exclusive of the further additional sum as the part of the rental computed on a tonnage basis and more fully described in lines beginning at nineteenth line from top of fifth page and continuing through line fifteen from top of page six, both inclusive) charged by said lessor for such haul and transportation over the lines of railroad owned or controlled by it shall not be greater than those charged by it to others for a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar

circumstances and conditions. And the said lessee, for itself, its successors and assigns, covenants and agrees that it will cause to be transported over the lines of the lessor to its demised premises not less than five hundred thousand (500,000) tons of bituminous coal or coke in every year between September 1 and August 31, both inclusive, unless prevented from so doing by strikes in the Pennsylvania mining regions or failure of transportation facilities on the roads over which coal shipped to the lessee is transported or other causes beyond the reasonable control of the lessee.

C. R. R. of N. J. to Lehigh Coal & Navigation Company, one year from Feb. 1st, 1912, from year to year thereafter, two coal pockets at Elizabethport, $400 per year and 5c. per ton on all coal in excess of 8,000 tons per annum, contains the following covenant:

(c) That all coal shipped to or from said demised premises and handled thereat, so far as the lessees can control the routing thereof from or to points on or reached via the railroad lines of the lessor, shall be shipped over such lines and their connections whenever the rates charged for such service shall not exceed those charged to others for a generally similar service and whenever such rates shall not exceed the rates charged by other railroad companies for like transportation between the same points.

Substantially similar covenant in the following leases: 729

Central R. R. of N. J. to C. M. Peterson & Company, one year from April 1st, 1911, and from year to year thereafter, property at Perth Amboy, $600 per year and 10c. per ton on all coal in excess of 6,000 tons per annum.

Central R. R. of N. J. to Drifted Anthracite Coal Company, one year from May 1st, 1912, and from year to year thereafter, property at Bowmanstown, Pa., $75 per annum.

C. R. R. of N. J. to George M. Friese, one year from April 1st, 1912, with privilege of renewal for one year, property at Woodridge, N. J., $400 per annum and 10c. per ton on all coal in excess of 4,000 tons per annum.

C. R. R. of N. J. to Edward I. Edwards, property in Jersey City, five years from May 15th, 1911, with five years renewal, $1,000 per year and 10c. per ton on all in excess of 10,000 tons per annum.

C. R. R. of N. J. to Somerset Manufacturing Company and Raritan Woolen Mills sidings and trestles at Raritan dated Jan. 15th, 1907, contains the following covenants:

All freight or coal which the Somerset Company and the Raritan Company or either of them have to offer for shipment from or which is to be received at said sidings and trestles so far as they or either of them can control the routing thereof to or from points on or reached via the lines of the railroad company, shall be shipped over such lines and their connections whenever the rates charged for such service shall not exceed those charged to others for a generally similar service, and whenever such rates shall not exceed the rates charged by other railroad companies for like transportation between the same points.

This agreement shall continue in force so long as the Somerset Company and the Raritan Company shall continue to receive at or ship from said sidings and trestles an aggregate amount of not less than five thousand (5,000) tons of freight or coal per annum from the date hereof, and when such aggregate annual amount of freight or coal so received at or shipped from said sidings and trestles shall be less than said five thousand (5,000) tons, then the railroad company, at its option, may
730 declare this agreement at an end and may remove said sidings and trestles and materials composing the same from the lands of said Somerset Company and Raritan Company, without being liable in damages for such removal.

This agreement may also be terminated by either of the parties hereto in case of breach of any covenant or agreement by the other or others to be performed, if such breach be not compensated within 10 days after written notice, and it may also be so terminated by the railroad company in the event that the grants, consents, authority, and permission or any of them to maintain and operate said main switch shall lapse or become inoperative or shall not be procured and vested as provided in article "Second" hereof.

Note.—No provision for rent.

C. R. R. of N. J. and Vineland Railroad Company to Robert Pond, dated Feb. 28th, 1903, one year from March 1st, 1903, eleven coal pockets at Vineland, N. J., $1.00 per year, contains the following covenant:

> The party of the second part hereby covenants for himself, his heirs, executors, administrators, and assigns, that at least three thousand (3,000) tons per annum of all the coal consigned to, dumped upon, or sold from the demised premises shall be purchased by him exclusively from mines upon the railroad lines of the parties of the first part and the Philadelphia and Reading Railway. A breach of this covenant shall, at the option of the parties of the first part, be sufficient cause for termination of this lease forthwith, notwithstanding rent may have been paid in advance.

C. R. R. of N. J. to Kelchner & Son, five years from July 1st, 1907, with renewal of five years, twelve coal pockets at Walnutport, Pa., 10c. per ton, with guarantee of $200 per year, contains the following covenant:

> That they will ship to said trestle not less than two thousand (2,000) tons of coal in each and every year during the terms hereby created, and that all coal consigned or shipped
731 to them to be dumped on said trestle shall be transported over the railroad lines of the party of the first part.

(Above statement received in evidence and marked "**Plaintiff's Exhibit No. 69,**" March 2, 1914.)

I read in evidence from the report of the Reading Company for 1913, already in evidence, the following:

READING COMPANY.

Directors.—George F. Baer, Henry A. DuPont, Henry P. McKean, Samuel Dickson, Edward T. Stotesbury, Henry C. Frick, George F. Baker, Peter A. B. Widener, Daniel Willard.

President, George F. Baer; vice president, George Ziegler; secretary, Jay V. Hare; treasurer, Harry E. Paisley.

PHILADELPHIA & READING RAILWAY COMPANY.

Directors.—Henry A. DuPont, Edward T. Stotesbury, Henry C. Frick, George F. Baker, Peter A. B. Widener, Daniel Willard.

President, George F. Baer; vice president, Theodore Voorhees; vice president and freight traffic manager, John F. Auch; vice president and general manager, Agnew T. Dice; secretary, George Ziegler; treasurer, Harry B. Paisley.

THE PHILADELPHIA AND READING COAL AND IRON COMPANY.

Directors. Henry P. McKean, Edward T. Stotesbury, Henry C. Frick, George F. Baker, Peter A. B. Widener, Daniel Willard.

President, George F. Baer; vice president and general manager, W. J. Richards; secretary, W. G. Brown; treasurer, Harry E. Paisley. (p. 3.) 732

Net result of the business of the three companies for the past fiscal year and comparison with previous year:

	1912-13		1911-12	
Reading Company.				
Receipts	$9,624,836.08		$8,085,062.76	
Expenses	104,539.91		110,886.55	
Gross corporate income	9,520,006.17		7,974,176.21	
Deductions from income	5,258,331.03		5,572,375.48	
Net corporate income		$4,261,675.14		$2,401,800.73
Philadelphia and Reading Railway Company.				
Receipts	52,214,894.05		45,805,714.66	
Expenses	30,547,340.66		28,516,878.09	
	21,667,553.39		17,398,836.57	
Taxes	1,300,478.43		949,775.84	
Gross corporate income	20,367,074.96		16,379,060.73	
Additions and betterments	2,391,562.36		2,629,739.53	
	17,975,512.60		13,720,321.20	
Deductions from income	8,276,905.29		8,220,482.71	
Net corporate income		9,698,607.31		5,508,838.49
The Philadelphia and Reading Coal and Iron Company.				
Receipts	40,983,053.03		35,733,652.85	
Expenses	37,196,144.69		34,612,537.91	
Gross corporate income	3,786,918.34		1,121,114.94	
Deductions from income	2,647,325.93		949,539.29	
Net corporate income		1,139,592.41		171,575.65
Net corporate income of three companies		15,099,874.86		8,082,214.87

733 THE PHILADELPHIA AND READING COAL AND IRON COMPANY.

The total production of anthracite coal from the lands owned, leased, and controlled by the Philadelphia and Reading Coal and Iron Company for the year ended June 30, 1913, was 12,807,996.06 tons, as compared with 10,098,831.02 tons mined during the previous year, an increase of 2,709,165.04 tons, or 26.83 per cent.

During the year the company mined 11,089,742.16 tons, an increase of 2,418,729.16 tons or 27.89 per cent; purchased 524,574.05 tons, a decrease of 116,697.15 tons, or 18.20 per cent, and sold 10,748,603.00 tons, an increase of 553,912.18 tons, or 5.43 per cent as compared with the previous year. (P. 16.)

The increase of receipts from the sale of anthracite over last year was $5,057,056.84; the increase in receipts from sale of bituminous and from other sources was $192,353.34, making an increase in gross receipts of $5,249,410.18 as compared with previous year. (P. 17.)

READING COMPANY.

Statement of miscellaneous stocks owned by Reading Company.

Stocks of—	Par, June 30, 1913.	
	Pledged under general mortgage.	Not held by trustee of general mortgage.
* * * * *	*	*
Central Railroad of New Jersey, common		$14,504,000.00
* * * * *	*	*
Philadelphia and Reading Terminal Railroad Company, common	$8,497,500.00	2,500.00
* * * * *	*	*
Port Reading Railroad Company, common	1,555,000.00	445,000.00
734 * * * * *	*	*
Schuylkill Navigation Co., preferred		3,233,450.00
Schuylkill Navigation Co., common		648,500.00
* * * * *	*	*
Temple Iron Company, common		281,600.00

(P. 29.)

From the report of the Central Railroad Company of New Jersey for 1913, already in evidence, the list of directors and officers:

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY.

Directors.—George F. Baer, George F. Baker, Harris C. Fahnestock, Eben B. Thomas, Charles Steele, Robert W. de Forest, Henry Graves, jr., E. T. Stotesbury, Howard W. Maxwell.

General officers.—President, George F. Baer; chairman executive committee, George F. Baker; vice president and general counsel, Robert W. de Forest; vice president and general manager, William G. Besler; vice president and freight-traffic manager, Tilghman B. Koons; general attorney, Jackson E. Reynolds; assistant counsel, George Holmes; secretary and treasurer, George O. Waterman; comptroller, John A. Taylor; assistant freight traffic manager, Eleazer M. Snyder; general freight agent, Arthur Hamilton; general

passenger agent, William C. Hope; general superintendent, C. William Huntington; chief engineer, Joseph O. Osgood; superintendent motive power, Charles E. Chambers; manager marine department, Henry L. Joyce.

Securities owned by the Central Railroad of New Jersey. 735

	Par value.	Pledged under general mortgage.	Unpledged.
Stocks.			
Alliance Coal Mining Co.	$150,000.00		$150,000.00
Lehigh & Wilkes-Barre Coal Co.	8,491,150.00	$7,850,000.00	641,150.00
Lehigh & Hudson River Ry. Co.	163,300.00		163,300.00
Bonds.			
Lehigh & Wilkes-Barre Coal Co., 4 per cent.	6,669,000.00		6,669,000.00

From the report of the Lehigh & Wilkes-Barre Coal Company for 1913, the list of directors and officers:

LEHIGH & WILKES-BARRE COAL CO.

Directors.—George F. Baer, Reading, Pa.; George F. Baker, New York, N. Y.; Samuel Dickson, Philadelphia, Pa.; Edward T. Stotesbury, Philadelphia, Pa.; Andrew H. McClintock, Wilkes-Barre, Pa.; Charlemagne Tower, Philadelphia, Pa.; Thomas A. Wright, Wilkes-Barre, Pa.

Officers.—George F. Baer, president; Charles F. Huber, vice president and general manager; Percival B. Heilner, vice president and general agent; George O. Waterman, secretary and treasurer; Warren C. Johnson, comptroller; John D. Landis, purchasing agent. (P. 3.) 736

5,188,221.00 tons were mined and shipped during the current year, an increase of 1,202,795.19 tons, and 541,559.00 tons were purchased, a decrease of 144,969.04 tons, as compared with the previous year.

The tonnage sold was 5,678,373.05, an increase of 497,914.19 tons over previous year. The tonnage of prepared sizes sold, including lump, equaled 66.73 per cent and of pea and smaller 33.27 per cent. (P. 5.)

(The report of the Lehigh & Wilkes-Barre Coal Co. for 1913, received in evidence and marked **"Plaintiff's Exhibit No. 70,"** March 2, 1914.)

I also offer in evidence a statement of the acreage of anthracite coal lands leased by the Lehigh & Wilkes-Barre Coal Company to independent operators, furnished by Mr. Reynolds:

LEHIGH AND WILKES-BARRE COAL COMPANY.

Statement showing total acreage of anthracite coal lands leased to independent operators.

	Acres.
Containing all veins	885
Mammoth vein	30.9
Wharton and Buck Mountain veins	96.46
Ross and Red Ash veins	42
Stanton vein	9.94
Five-foot vein	17.13

Where veins are shown only tonnage contained in veins mentioned is leased.

(Above statement of acreage received in evidence and marked **"Plaintiff's Exhibit No. 71,"** March 2, 1914.)

I also offer in evidence a copy of lease, dated September 1st, 1896, by the Lehigh & Wilkes-Barre Coal Company to the Red Ash Coal
737 Company:

Indenture of mine lease, made the first day of September, in the year of our Lord one thousand eight hundred and ninety-six, between the Lehigh and Wilkes-Barre Coal Company, a corporation incorporated under the laws of the State of Pennsylvania, hereinafter called the Lessor, of the one part, and the Red Ash Coal Company, a corporation, incorporated under the laws of the State of Pennsylvania, hereinafter called the Lessee, of the other part:

Witnesseth, That the said Lessor for and in consideration of the covenants and agreements hereinafter contained, to be kept and performed by and on the part of the said Lessee, hath demised, leased, and to mine let, and by these presents doth lease, demise, and to mine let unto the said Lessee, its successors and assigns, all the merchantable and minable coal in the veins or seams of coal known as the Ross and Red Ash veins in, under, and upon all that certain tract of land situate in the township of Wilkes-Barre, Luzerne County, Pennsylvania, bounded and described as follows:

* * * * * * *

Eighth. All the coal mined from said premises and sent to market shall be transported over the lines of such railroads as are now or shall be owned or controlled or designated by the said Lessor, or by the Central Railroad Company of New Jersey, its successors or assigns, provided the said companies or either of them furnish cars
738 for the transportation of the said coal in the same proportion as furnished their own mines, and so long as such cars are so furnished there shall not be any coal shipped from the said demised premises or any part thereof by any other railroad, or lines than as aforesaid owned or controlled or designated by the said Lessor, or by the Central Railroad Company of New Jersey, its successors or assigns; the rate of freight on the coal mined from the hereby demised premises and shipped to market over the lines of the Central Railroad Company of New Jersey, or such roads as may be designated by the said Lessor, shall not be any greater rate of freight than charge by the said Central Railroad Company of New Jersey, or such roads as may be designated by the said Lessor, for coal shipped over the aforesaid

lines, from any adjacent mines to the said point of delivery. Any breach of this covenant on the part of the said Lessee shall, at the option of the said Lessor on thirty days' notice of intention to forfeit, work an absolute forfeiture of this lease, and the estate hereby demised shall revert to said Lessor, and the said Lessor may take possession of the premises hereby demised, and the improvements erected thereon, by legal process or summarily and without legal process, at its option. And any non-user of this right of forfeiture, in case of breach of this covenant, shall not waive the right to enforce a forfeiture when and so often as a new breach shall arise.

* * * * * * *

In witness whereof the said parties to these presents have caused their respective corporate seals to be hereto affixed, duly attested by 739
the signatures of their respective presidents and secretaries
Dated the day and year first above written. Signed in duplicate.

LEHIGH AND WILKES-BARRE COAL COMPANY,
By J. R. MAXWELL, *President.*

In presence of—
M. B. WILLIAMS,
S. J. LONKIN.
Witness to J. R. MAXWELL:
J. W. MEDLER.
Attest:
HENRY GRAVES, Jr., *Secretary.*

THE RED ASH COAL COMPANY,
By G. H. PARRISH, *President.*

Attest:
[L. S.] W. LEAVENWORTH, *Secretary.*

(Lease above referred to and from which extracts are taken received in evidence and marked **"Plaintiff's Exhibit No. 72,"** March 2, 1914.)

Attached to the above lease is a statement furnished by Mr. Reynolds as to certain clauses in other leases by the Lehigh & Wilkes-Barre Coal Company to other lessees, as follows:

(Extract from lease to C. M. Dodson & Co., July 1, 1886.) 740

F. That all coal shipped from demised premises shall be transported over the lines of such roads owned or controlled or as designated by the Lehigh and Wilkes-Barre Coal Company, provided the said company furnishes cars for the transportation of the same, at rates not exceeding those charged by other transportation companies.

(Extract from lease of C. M. Dodson & Co., Dec. 17th, 1891.)

Eighth. All the coal mined from the said demised premises and sent to market shall be transported over the lines of such railroads as are or shall be owned or controlled or designated by the said Lessor, or by the Central Railroad Company of New Jersey, its successors or assigns, provided the said companies or either of them furnish ample and sufficient cars for the transportation of the said coal; and so long as the said cars are furnished there shall not be any coal shipped from the said demised premises or any part thereof by any other railroad, or lines, than as aforesaid owned or controlled or designated by the said Lessor, or by the Central Railroad Company

of New Jersey, its successors or assigns: the rate of freight on the coal mined from the hereby demised premises and shipped to market over the lines of the Central Railroad Company of New Jersey or such roads as may be designated by the said Lessor, shall not be any greater rate of freight than charged by the said Central Railroad Company of New Jersey or such roads as may be designated by the said Lessor, for coal shipped over the aforesaid lines, from any adjacent mines, or mines which now receive the same rate of freight, to the same point of delivery, or more than the average rates made by the Lehigh Valley R. R. Co., from time to time from the same districts. The said Lessees expressly agree that they will mine and remove from other lands which they now, or may hereafter own, lease or control in the vicinity of the premises hereby demised, at least one-half as much coal as they mine and remove from the premises hereby demised and from the premises demised in the lease made between the parties hereto, dated first July, A. D. 1886, and that of the coal so mined and removed from said other lands in the vicinity of the premises demised by this lease and by said lease of first July, A. D. 1886, they will, each month during the continuance of this lease or the said lease of first July A. D. 1886, ship or cause to be
741 shipped, to market, over the lines of railroad above designated, at least one-half ton of coal, in addition to each ton of coal mined and removed from the premises demised by this lease and by said lease of first July A. D. 1886 and shipped as above provided; provided that the number of tons of coal so shipped by the said Lessees in any month from said other lands in the vicinity of the premises demised by this lease and by said lease of first July A. D. 1886, in excess of one-half ton to each ton of coal mined, removed and shipped from the premises demised by this lease and by said lease of first July A. D. 1886, shall apply on the deficiency in the number of tons of coal so shipped from said other lands in the vicinity of the premises demised by this lease and by said lease of first July, A. D. 1886, in any future month of same year, or any subsequent year; and provided that the said Lessor, or the Central Railroad Company of New Jersey, their successors or assigns, shall furnish cars for the transportation of said coal. The rates of freight on the coal mined and removed from said other lands in the vicinity of the aforesaid premises demised by the said Lessor to the said Lessees and shipped to market over the lines of railroad as aforesaid shall not be any greater rate of freight than as provided for coal mined and shipped to market from the premises hereby demised.

(Extract from lease to Melville Coal Co., January 1, 1885.)

Seventh. All the coal mined from the said demised premises and sent to market shall be transported over the lines of such railroads as are or shall be owned or controlled or designated by the Lessor, or by the Central Railroad Company of New Jersey, its successors or assigns, provided the said companies or either of them furnish cars for the transportation of the said coal in the same proportion as cars are furnished to the Lessors' own mines, and so long as such cars are so furnished there shall not be any coal shipped from the said premises or any part thereof by any other railroad or lines than as aforesaid owned or controlled or designated by the Lessor or by the Central Railroad Company of New Jersey, its successors or assigns;

the rate of freight on the coal mined from the hereby demised premises and shipped to market over the lines of the Central Railroad Company of New Jersey, or such roads as may be designated by the Lessor, shall not be any greater rate of freight than the rate charged by the Central Railroad Company of New Jersey, or such roads as may be designated by the Lessor, for coal shipped over the aforesaid lines from any adjacent mines to the same point of delivery.

Any breach of this covenant on the part of the Lessee shall, at the option of the Lessor, on sixty days notice of intention to forfeit, work an absolute forfeiture of this lease and the estate hereby demised shall revert to the Lessor, and the Lessor may take possession 742
of the premises hereby demised and the improvements erected thereon, by legal process, or summarily and without legal process, at its option. And any non-user of this right of forfeiture in case of breach of this covenant, shall not waive the right to enforce a forfeiture when and so often as a new breach shall arise.

(Lease to Red Ash Coal Company, 27 July, 1881.)

Does not contain any covenant binding output to C. R. R. Co. of N. J.

(Lease to Red Ash Coal Company, 1 April, 1891, and its renewals.)

Contains covenant binding output to C. R. R. Co. of N. J.

(Lease to Wilkes-Barre Anthracite Coal Company, 1 March, 1911.)

Does not contain any covenant binding output to C. R. R. Co. of N. J.

(Lease to J. M. Norris, 24 June, 1911.)

Does not contain any covenant binding output to C. R. R. Co. of N. J.

(Lease above referred to and from which extracts are taken received in evidence and marked "Plaintiff's Exhibit No. 72," March 2, 1914.)

I also offer in evidence a statement furnished by Mr. Reynolds 743
showing the tonnage of anthracite coal mined by tenants from lands leased from the Lehigh & Wilkes-Barre Coal Company:

Statement showing tonnage of anthracite coal mined by tenants from lands leased of Lehigh and Wilkes-Barre Coal Company during 5 years ending December 31st, 1913.

Tenants.	1909	1910	1911	1912	1913	5 years.
C. M. Dodson & Co.	11,296.10	20,457.02	21,361.13	19,209.18	39,738.10	112,063.13
Red Ash Coal Co.	91,449.18	102,222.00	110,747.06	98,480.01	78,453.13	481,352.18
West End Coal Co [a]	329,574.05	335,895.14	307,392.01	227,430.00	[b]235,293.18	1,435,585.18
Melville Coal Co.	230,829.13	256,517.01	322,725.02	267,120.13	[c]348,960.13	1,426,153.02
Wilkes-Barre Anthracite Coal Co. J. M. Norris. (No coal mined)			8,819.18	3,046.03	2,678.12	14,544.13
	663,150.06	715,091.17	771,046.00	615,286.15	705,125.06	3,469,700.04

[a] Since the lease was made to the West End Coal Co. most of its output was shipped via P. R. R.
[b] All this tonnage was shipped via the Pennsylvania Railroad.
[c] Of this tonnage 129,000 tons was shipped via the Penn. Railroad.

(The above statement received in evidence and marked "Plaintiff's Exhibit No. 73," March 2, 1914.)

744 I also offer in evidence a statement furnished by Mr. Reynolds showing anthracite coal tonnage shipped to points on and over the Central Railroad:

Statement showing anthracite coal tonnage shipped to points on and over Central R. R. of N. J. system, furnished by Philada. & Reading R. R., Lehigh & Wilkes-Barre Coal Co., the Lehigh Coal & Navigation Co., and all other shippers, for five years ending June 30th, 1913.

	Tons 2,240 lbs.
Year ending June 30th, 1909:	
Received from—	
P. & R. Ry. at Allentown & Bound Brook Jct	351,633.18
Lehigh & Wilkes-Barre Coal Co	4,805,097.15
Lehigh Coal & Navigation Co	2,327,528.16
All other shippers	1,190,196.17
Total	8,674,457.06
Year ending June 30th, 1910:	
Received from—	
P. & R. Ry. at Allentown & Bound Brook Jct	399,305.09
Lehigh & Wilkes-Barre Coal Co	4,697,141.19
Lehigh Coal & Navigation Co	2,386,949.01
All other shippers	1,280,368.03
Total	8,763,764.12
Year ending June 30, 1911:	
Received from—	
P. & R. Ry. at Allentown & Bound Brook Jct	473,615.07
Lehigh & Wilkes-Barre Coal Co	4,837,071.12
Lehigh Coal & Navigation Co	2,842,514.12
All other shippers	1,397,685.06
Total	9,550,886.17
Year ending June 30th, 1912:	
Received from—	
P. & R. Ry. at Allentown & Bound Brook Jct	507,577.06
Lehigh & Wilkes-Barre Coal Co	4,494,101.16
Lehigh Coal & Navigation Co	2,589,753.06
All other shippers	1,082,069.07
Total	8,673,501.15
Year ending June 30th, 1913:	
Received from—	
P. & R. Ry at Allentown & Bound Brook Jct	682,204.07
Lehigh & Wilkes-Barre Coal Co	5,524,678.05
Lehigh Coal & Navigation Co	2,649,391.19
All other shippers	1,399,162.15
Total	10,255,437.06

(Statement just referred to and copied in the record received in evidence and marked **"Plaintiff's Exhibit No. 74,"** March 2, 1914.)

745 Mr. KINGSBURY. On the request of counsel for the Government Mr. Reynolds makes the following statement:

Mr. REYNOLDS. The secretary of the Central Railroad Company of New Jersey reports to me that there is a total of 1,633 shares of the stock of the Lehigh & Hudson River Railroad Company which is undoubtedly held in the interest of the Central Railroad Company of N J. That stock, however, stands in the following names: 1,593

shares in the name of George F. Baer and 10 shares each in the names of George F. Baker, H. C. Fahnestock, E. T. Stotesbury, and Robert W. de Forest; and Mr. John Sayer, the secretary of the Lehigh & Hudson River Railroad Company advises me, in strict answer to my inquiry, that none of the capital stock of the Lehigh & Hudson River Railroad Company has been issued to or stands in the name of the Central Railroad Company of New Jersey, but this is responsive to what you are after and I, therefore, give this stock:

Shares of the capital stock of the Lehigh & Hudson River Railroad Company to the number of 1,593 have been issued in the name of George F. Baer. That at the last annual meeting of the stockholders 746
of the said the Lehigh and Hudson River Railway Company, held on December 2nd, 1913, or upon an adjourned day of meeting, the said shares of stock so standing in the name of the said George F. Baer were voted under and upon a proxy of which the following is a [illegible]

Know all men by these presents: That I, the undersigned, stockholder in the Lehigh and Hudson River Railway Company, hereby constitute and appoint Lewis A. Riley, Morris Rutherfurd, John Sayer, or either of them, my true and lawful attorney and agent, for me and in my name, place, and stead, to vote as my proxy at the annual meeting of the stockholders of the said company to be held on December 2nd, 1913, or at any adjournment thereof, for the election of directors and for the transaction of any business which may legally come before the said meeting, and for me and in my name, to act as fully as I could do if personally present; and I hereby revoke any other proxy heretofore given by me.

Witness my hand and seal this 22nd day of November, 1913.

(Signed) GEORGE F. BAER. [L. S.]

In presence of—

H. A. WALLACE.

And I do further certify that with the exception of the votes cast by Frederick D. Underwood, E. B. Thomas, S. D. Warriner, Lewis A. Riley, William H. Truesdale, and C. D. Dixon, no other votes were cast at said meeting by any stockholder of said company except by and 747
upon stock issued to and standing in the names of corporations.

JOHN SAYER, *Secretary.*

(Received in evidence as **Plaintiff's Exhibit No. 75**, March 2, 1914.)

Now as to the Alliance Coal Mining Co. there are 6,000 shares in the name of the Central Railroad Company of New Jersey. For the last annual meeting, March 11, 1913, a proxy was executed appointing S. D. Warriner, R. H. Wilbur, S. S. Sneyd as proxy, or either of them. For the next annual meeting which is just about to occur March 10, this month, a proxy has been executed, appointing S. D. Warriner, R. H. Wilbur, or H. H. Pease as proxy, or either of the n. I am unable to give you a copy of that proxy because none was retained and you will have to get that from the Alliance Coal Company. Mr. H. F. Baker is or was the secretary of the above company. I suppose it is the usual form of proxy.

Mr. KINGSBURY. I do not think there is any point about getting it.

Mr. REYNOLDS. On your request as to the Lehigh & Wilkes-Barre Coal Co. there are 166,628 shares of that company in the name of the Central Railroad Company of New Jersey. There are 2,610 shares in the name of George F. Baer, 555 shares in the name of Mr. George F. Baker, 5 shares in the name of Samuel Dickson, 15 shares in the name of E. T. Stotesbury, 5 shares in the name of A. H. McClintock, and 5 shares in the name of Thomas A. Wright, being a total
748 of 169,823 shares.

At the last annual meeting of stockholders September 18, 1913, the shares standing in the name of the Central Railroad Company of New Jersey, to wit, 166,628, were voted by George F. Baer as proxy for the Central Railroad Company of New Jersey; 555 shares were voted by George F. Baer as proxy for George F. Baker; 105 shares were voted by Samuel Dickson in person; 2,610 shares were voted by George F. Baer in person; 5 shares were voted by Andrew H. McClintock in person; and I hand Mr. Kingsbury herewith copy of the proxies on which those proxy votes were cast.

Mr. COUDERT. It is just the ordinary form of proxy.

Adjourned, pursuant to agreement, to March 5, 1914.

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749 Met pursuant to adjournment at No. 2 Rector Street, New York City, Thursday, March 5, 1914, at 11 o'clock a. m.

Present: The examiner, Messrs. Coudert, Kingsbury, and Gordon, special assistants to the Attorney General, for the Government; Messrs. Heebner, Reynolds, Turner, Drinker, and Beattie, for defendants.

It is stipulated that, subject to any objection which any of the then absent parties may desire to interpose on the record, pursuant to the reservation to that effect, the testimony taken in the absence of the examiner on March 2, 1914, shall be deemed to have the same force and effect as if the witnesses had been sworn by and testified before the examiner; and that the exhibits then spread upon the record shall be deemed duly in evidence.

ROBERT J. MONTGOMERY, having been duly sworn, was examined and testified as follows:

750 By Mr. COUDERT:

Q. Please state your address.

A. My house address is 106 West Upsal Street, Germantown, Philadelphia; business address, Reading Terminal, Philadelphia.

Q. And your occupation?

A. General coal agent.

Q. For what company?

A. Philadelphia & Reading Coal and Iron Company.

Q. Your office is in the same building with the other two Reading companies?

A. Reading Terminal, Philadelphia.

Q. Is your office physically connected in any way with the office of the other two companies?

A. To which other two companies have you reference?

Q. The Reading Company and the Philadelphia & Reading Railway Company.

A. We occupy a room on the fourth floor of the Reading Terminal Building. We are no more in conjunction with the other companies there than some of the other tenants of the building.

Q. You are merely under the same roof?

A. Merely under the same roof.

Q. Do you hold any other office in the Philadelphia & Reading Coal and Iron Company?

A. No.

Q. Does it fall within your official functions to get out price lists 751
or circulars of your coal?

A. It does.

Q. How often do you do that?

A. We issue a circular in the spring, on April 1st—we have been in the habit of doing it— and then a circular monthly from then until September, the September circular holding good until the following April.

Q. Those various circulars, so issued by you throughout the year, contain schedules of prices at which you sell for the time mentioned in the circular?

A. Yes, sir.

Q. On what considerations do you base your prices?

A. Our prices are determined after a conference with the president.

Q. Will you explain, briefly, just exactly what is the mechanism of getting up one of those circulars?

A. The only mechanism about it is that I confer with the president.

Q. You bring him a proposed circular?

A. Bring him a proposed circular.

Q. You make the prices in the first instance?

A. No; I do not make the prices until I confer with the president.

Q. By the president, you mean Mr. Baer?

A. Mr. Baer.

Q. Then does he suggest to you changes in the circular?

A. If he thinks the figures as submitted are not right, yes. 752

Q. The figures are submitted by you?

A. The figures are submitted—by that I mean I take in the old circular; for the circular on the first of April I would take in last year's

circular and ask him if he considered that satisfactory for the coming year.

Q. And if not, you ask him whether he has any changes to make?

A. Yes.

Q. And he frequently does have such changes?

A. No, I can not say that he does.

Q. He sometimes does?

A. Sometimes.

Q. Then you make those changes?

A. By his direction.

Q. Under his directions?

A. By his direction.

Q. There are no other consultations, outside of the consultation between you and the president?

A. None, whatever.

Q. Do you, in making up tentative circulars, examine into the prices of coal sold by other companies or persons?

A. It has no bearing on the subject whatever.

Q. You do not take that into consideration at all?

A. No, sir.

Q. As a matter of fact, the prices are practically uniform, are they not?

A. As far as I understand, I believe they are.

753 Q. There has been some talk of independents selling at somewhat higher prices; do you know anything about that?

A. Independents never miss an opportunity of increasing the price of coal.

Q. Do you follow them in that?

A. We do not.

Q. Why do you not follow them?

A. Mr. Baer does not think it is good business policy.

Q And Mr. Baer has forbidden you to do that?

A. Yes.

Q. What you say as to the raising of prices at every opportunity applies to the independents, and not to the railroad companies?

A. Not to the Philadelphia & Reading Coal and Iron Company.

Q. Or to the other coal companies, as far as you know?

A. I presume not, although I know nothing about it.

Q. What you say as to the raising of prices refers to the independents?

A. Refers to the independent operators.

Q. You have no criticism of that kind to make in regard to the other companies, the so-called railroad companies?

A. No, sir.

Q. Your coal is sold at those circular prices; you do not make any specific reductions to specific persons, do you?

A. No; the circular price obtains.

Q. Can you explain something about the so-called sliding scale and the reduction during the spring and summer?

A. The sliding scale, or the reduction in the spring, was made with 754
the idea of encouraging large customers to take on coal at that time. It is a physical impossibility to mine enough coal during the winter months to supply the market. Now, in order to lessen the burden on the operating company, the Philadelphia & Reading Coal and Iron Company, by mining coal in the spring months and piling it up, the idea was conceived that perhaps it would be well to reduce the circular, so as to induce the coal dealer to take on coal in the spring of the year, and he carry the burden instead of us. That is all there is to it

Q. That explains the changes in prices during the year?

A. Yes, sir.

Q. That reduction is how much, in figures?

A. Fifty cents a ton, and then it goes up ten cents a month. In other words, the April circular would be fifty cents less than the September circular, or the winter schedule.

Q. And that is the uniform reduction?

A. That is the uniform reduction of the Coal and Iron Company.

Q. And that policy has been carried out for a number of years?

A. Has been carried out for a number of years.

Q. Did the president ever explain to you why he thought it bad policy to raise the prices when the independents did?

A. No. It is not a good business policy; we thought that we were getting fair profit and it was not good business policy to take advan- 755
tage of the market.

Q. You thought it might arouse criticism?

A. No, I do not think criticism entered into it. We are in business to stay, not for a week, or a month, or a year, and we like to hold our customers, and the only way we can do that is by treating them fair.

Q. And so he dictated a policy which he thought was the right one, according to his own personal views in that respect?

A. He did.

Q. And it was entirely his policy?

A. Entirely his policy.

Q. He controlled the matter?

A. He controlled the matter.

Q. There has been some talk of contract coal. Do you sell any contract coal at prices different from the circular?

A. We do, on the steam sizes only.

Q. You might explain about that.

A. In the steam sizes are included broken, pea, buckwheat, and rice. The last three are used largely by manufacturers and come in competition with bituminous coal. Bituminous coal is contracted for at a fixed price; so that, in order to secure the business, we have to fix the price so that the manufacturer would know what his fuel is going to cost him throughout the year. Broken coal is used largely by the gas-producing companies, and they, like the other manufacturers, want to know what their product is going to cost them throughout the year. All the other sizes are changeable, on the sliding scale.

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Q. In fixing your circular prices, or your contract prices, I understand that you are not influenced in any way by the changes in prices made by the independents?

A. None whatever.

Q. That does not affect your price in any respect?

A. No, sir.

By Mr. KINGSBURY:

Q. Have you a standard contract price, as distinguished from your circular price?

A. Yes.

Q. That is not a matter of individual negotiation with each purchaser?

A. No. We have a price, just as I explained to you a moment ago, where we have to compete with bituminous coal. We make that a contract price, and any contractor, any large user, is entitled to that price and we give it to him.

Q. How much below your circular price is your contract price?

A. It ranges from fifteen cents to twenty-five.

Q. Per ton?

A. Per ton.

Q. Do you know whether the other so-called railroad coal companies also sell coal on contract prices?

A. I do not, positively, but I think they do.

757

Q. Do you know how your contract prices compare with theirs?

A. I do not.

Q. You never made any inquiry into that?

A. Never made any inquiry.

Q. So you do not fix your contract prices with any reference to coal sold in the same manner by the other railroad coal companies?

A. No, sir; by the bituminous companies.

Q. You have competition from bituminous coal?

A. Oh, absolutely; in steam sizes.

Q. But not from the other anthracite dealers?

A. What do you mean by that?

Q. You say you have competition from the bituminous coal. Then I say, but you have no competition from other anthracite dealers?

A. Excuse me; but we have very keen competition with everyone producing anthracite coal.

Q. But I thought you said that you did not take their prices into consideration?

A. We do not; we make our own prices.

Q. How much range has there been in the price of coal in the last five years; how much variation, aside from the fifty-cent sliding scale arrangement?

A. I can not answer that offhand.

Q. As nearly as you recollect?

A. Probably 25 cents in some sizes. Others have not been changed 758
at all.

Q. Has it been an increase or decrease?

A. It has been an increase, brought about by the increase in wages to the miners in the last two or three years.

Q. How long have you been in this business?

A. Thirty-odd years.

Q. Can you extend your answer, then, a little farther back, as to the range of prices of coal; just roughly?

A. I think, speaking from memory, there has been no change made from 1902 up to the time of the last strike, which was in 1912.

Q. Was there an increase about 1902?

A. Oh, yes; in 1902, as you probably recall, we had the big strike.

Q. There was an increase then, which has remained?

A. There was an increase then, due to the increase in miners' wages, and that price obtained until 1912. Then there was another increase in the miners' wages.

Q. How much of an increase was there in 1902? I do not mean a temporary increase during the famine, but a permanent increase.

A. Twenty-five cents, I think, but I am only speaking from memory.

By Mr. COUDERT:

Q. In fixing your contract prices for the kinds of coal that you mentioned as covered by contract prices, you take into consideration the bituminous prices for that purpose, but you do not take 759
into consideration the anthracite prices for the same purpose? You only consider the bituminous competition?

A. Only consider the bituminous.

Q. What do you do to obtain orders, in the way of advertisement, soliciting, etc.?

A. We have sales agencies in Philadelphia, Baltimore, Washington, Rochester, Buffalo, Milwaukee, Chicago, and Minneapolis.

Q. What do they do? Send out circulars to their customers?

A. They have traveling salesmen and solicit themselves by letters, and then we have advertisements in all the coal-trade journals, and we solicit business the same as any other mercantile house would.

Q. Do you sell your coal all over the country?

A. Practically all over the country, from Winnipeg to the far South, Galveston.

Q. What is the best market for your coal?

A. That is pretty hard to answer.

Q. Do you sell much in the western market?

A. Considerable; I should say 12 to 14 per cent of our production.

Q. Your principal market is the tidewater market?

A. The principal market is the tidewater and in the State of Pennsylvania.

Q. In the State itself?

760 A. Yes, ir.

By Mr. KINGSBURY:

Q. By tidewater, do you mean New York tidewater?

A. Philadelphia and New York tidewater points.

Cross-examination by Mr. REYNOLDS:

Q. In your reference to the periodical and regular reduction of fifty cents per ton between the prices in September and April, did you mean your answer to refer to anything more than the so-called prepared sizes of coal?

A. No; prepared sizes only.

Q. It does not refer to any sizes of coal below pea?

A. No.

Q. About how much of an investment have you in your properties in these various agencies?

A. We have, I should say upwards of a couple of a million dollars, just in the equipment in those various agencies.

Q. About how large a selling staff have you, covering all those agencies?

A. Twenty-five to fifty men.

Q. That fifty-cent reduction does not apply to pea coal, does it?

A. No.

Counsel for the Government offer in evidence a statement furnished by the Lehigh Coal and Navigation Company in regard to its circular prices, etc., as follows:

Statement furnished by the Lehigh Coal and Navigation Company in response to a request by counsel for the Government for a statement showing the circular and actual prices at Philadelphia, New York tide, and New England points during the 3 years last passed. 761

Since September 1, 1910, this company has issued no line circulars and has not issued any f. o. b. tide circulars since some time prior to September 1, 1910. The only document in the nature of a circular which has been issued during the past 3 years is a sheet attached hereto by which the customers of the company were notified that the regular prices of the company on prepared coal should be increased 10 cents a ton, and on pea and smaller 5 cents a ton, subsequent to September 1, 1913, by reason of the Pennsylvania law imposing a tax on anthracite coal. The "full circular prices" of the company referred to in this sheet were not prices fixed by any printed circulars, but were merely the regular prices charged by the company.

The price demanded by the company for its product is necessarily regulated by the price fixed in the circulars of the Philadelphia & Reading Coal & Iron Company and of the Lehigh Valley Coal Sales Company, which circulars are printed and distributed to the public.

In certain special territories, where the coal mined by this company is in special demand, and is considered superior to others for the purpose of the industries therein located, this company demands and 762 receives a price from 10 to 20 cents a ton in excess of the circular prices of the companies above referred to. In other territories it demands and receives a price equal to these circular prices, and in some other territories receives a price less than these circular prices. The whole matter is controlled by the demands of the consumers and by their desire for the quality of coal furnished by this company.

The actual prices received by the company on prepared sizes of coal at Philadelphia, at New York tide, and at New England points during the past 3 years have been as follows:

THE LEHIGH COAL & NAVIGATION COMPANY.

Average prices received f. o. b. vessels, New York Harbor, years 1911, 1912, 1913.

	1913	1912	1911
Broken	$4.462	$4.401	$4.249
Egg	5.058	5.085	4.688
Stove	5.069	5.105	4.725
Chestnut	5.303	5.265	4.886
Total prepared	5.005	4.989	4.623

THE LEHIGH COAL AND NAVIGATION COMPANY.

Average prices received at mines, years 1911, 1912, 1913.

ON SHIPMENTS TO PHILADELPHIA AND NEW ENGLAND. 763

	Broken.	Egg.	Stove.	Chestnut.
PHILA.				
1911		3.416	3.492	3.698
1912	3.25	3.721	3.873	4.065
1913		3.516	3.924	4.092
NEW ENGLAND.				
1911	3.00	3.209	3.283	3.602
1912	3.138	3.538	3.575	3.674
1913	3.150	3.530	3.641	3.912

THE LEHIGH COAL & NAVIGATION COMPANY.

Average prices received at mines, years 1911, 1912, 1913.

	1913 average.	1912 average.	1911 average.
Lump	$3.455	$3.070	$?.888
Broken	2.971	2.888	2.757
Egg	3.519	3.577	3.207
Stove	3.649	3.704	3.345
Chestnut	3.881	3.848	3.550
Total prepared	3.631	3.624	3.310

NOTES.

The figures shown above are on all the coal sold by the company at the above points, with the exception of the figures for New Eng-
764 land and for Philadelphia. The figures for New England and for Philadelphia are ascertained by an average of the sales to the largest customers of the company at such points, rail delivery, and represent substantially, although not with mathematical accuracy, the prices realized on sales on New England and Philadelphia territory, rail delivery.

The rates above specified are the rates f. o. b. mines, with the exception of the rates to New York tide, which include the freight rates.

The prices at New England points and Philadelphia are rail delivery.

Upon all sales of coal shown in the above statements a discount of 50 cents per ton was allowed April 1st, this reduction decreasing 10 cents per ton per month until September 1st. All prices are without deduction for selling expenses.

The attached document referred to is as follows:

PHILADELPHIA, *August 20th, 1913.*

THE LEHIGH COAL AND NAVIGATION COMPANY.

(In circle with red centre): OLD COMPANY LEHIGH.

Effective September 1st, 1913, the full circular prices of

OLD COMPANY'S LEHIGH COAL.

will be advanced as follows:

765 Ten cents (10c.) per ton on prepared.
Five " (5c.) " " " pea and smaller sizes.

Above advances are made necessary as the result of laws recently enacted by the State of Pennsylvania.

All sales subject to printed conditions of delivery.

RICHARD T. DAVIES, *General Coal Agent.*

Counsel for the Government also offer in evidence a statement in regard to the manner of voting the stocks held by the Lehigh Coal and Navigation Company, as follows:

1. In the case of the Lehigh & New England Railroad Company and Alliance Coal Mining Company stock ownership, a proxy is given by the Lehigh Coal and Navigation Company in favor of its president and secretary, or either of them, to vote the stock at the annual meetings of the said railroad and mining companies. In each instance the board of managers of the Lehigh Coal and Navigation Company instructs the officers to whom the proxy is given to vote for a specific ticket.

2. In the case of the Lehigh & Hudson River Railway Company, the Lehigh Coal and Navigation Company gives a proxy in favor of the president (Lewis A. Riley), vice president (Morris Rutherfurd), and secretary (John Sayer), of the Lehigh & Hudson River Railway Company, and after the annual meeting of the said company the names of the directors elected are reported to the board of the Lehigh Coal and Navigation Company for their information. 766

3. In the case of the Lehigh & Wilkes-Barre Coal Company, to the best of my knowledge and belief, no proxy has been given by the Lehigh Coal and Navigation Company to vote the stock owned by it in that company.

Mr. COUDERT. Mr. Drinker, would you be good enough to explain what you mean by the language in this statement (p. 373) that "the price demanded by the company for its product is necessarily regulated by the price fixed in the circulars of the Philadelphia & Reading Coal and Iron Company and of the Lehigh Valley Coal Sales Company, which circulars are printed and distributed to the public?"

Mr. DRINKER. I believe that that was explained by the following paragraph—that it is an impossibility to obtain much more for coal than the price charged for similar coal by the other companies; that, when the circulars of the Philadelphia & Reading Coal and Iron Company and the Lehigh Coal Sales Company come out, that necessarily fixes an approximate maximum charge for coal. In some instances the Lehigh Coal and Navigation Company, by reason of its superior product, is enabled to obtain a slightly higher price.

Mr. COUDERT. Mr. Drinker, you were to furnish us with a statement regarding the Panther Creek Railroad.

Mr. DRINKER. Mr. Turner's company owns that railroad and he has 767 prepared a statement.

A statement, as called for by the Government, containing a history of the Panther Creek Railroad, was furnished by Mr. Turner, as follows:

The Panther Creek Railroad was constructed by the Lehigh Coal & Navigation Company in the years 1846 and 1847. The road as originally built extended from a point of connection with the Philadelphia & Reading Railway Company at Tamaqua, in Schuylkill County, Pennsylvania, through the Panther Creek Valley to Lansford

and Summit Hill, in Carbon County, and connected at or near the latter point with an incline plane and gravity railroad extending across the mountain to the canal on the Lehigh River at Mauch Chunk. This incline plane was a substantial part of the Panther Creek Railroad, and prior to 1872 was used extensively for the shipment of coal in connection with the Lehigh Canal and freight from the canal to points in the Panther Creek Valley. Upon the completion in 1872 of the Nesquehoning Tunnel (to which further reference is made hereafter) this incline plane and gravity railroad ceased to be used for the transportation of freight shipments, and in 1874 was sold. Since then it has been operated exclusively for passenger traffic, principally summer tourists, being known as the "Switchback Railroad."

To appreciate the service rendered by the Panther Creek Railroad,
768 it is necessary to know the physical aspects of the territory served by it. The Panther Creek Valley is a cul-de-sac, being surrounded on the north, south, and east sides by mountains, the only available natural outlet for a railroad being at Tamaqua, at the western end. At the eastern end of the valley is the borough of Summit Hill with a population of 4,500; on the slopes of the mountains are the boroughs of Lansford and Coaldale, with populations of 9,000 and 5,500, respectively, and as above stated the borough of Tamaqua, having a population of 10,000, is at the western end. There is also more or less population between these points, the estimated population of the valley, excluding Tamaqua, being 25,000. At Lansford is located the offices and shops of the Lehigh Coal & Navigation Company, which mines approximately 4,000,000 tons of anthracite coal per year. The people living in the Panther Creek Valley are extremely prosperous, are well housed, and their freight transportation requirements are supplied exclusively by the tracks of the Panther Creek Railroad. The volume of miscellaneous freight handled is large and constantly increasing. The passenger requirements have been supplied by trains operated by the Panther Creek Railroad and the Central Railroad of New Jersey, the latter company having a trackage right for its passenger trains between Hauto and Tamaqua; in addition, there is now an electric or trolley railroad operating between Mauch Chunk, Tamaqua, and beyond. The entire output of coal mined by the Lehigh Coal & Navigation Company in the Panther Creek Valley and all the supplies required for the operation of its mines and the construction and maintenance of its breakers and other facilities therein have of necessity been transported over the rails of the Panther Creek Railroad, inasmuch as there are no other railroad facilities.

769 In 1872 the Nesquehoning Tunnel, extending through the mountain separating the Panther Creek Valley from the Nesquehoning Valley on the north, was completed at a cost of between $500,000 and $600,000, and the Panther Creek Railroad was thereupon extended through this tunnel and beyond to a point of connection with the Nesquehoning Valley Railroad, then and since leased and operated by the Central Railroad of New Jersey. Subsequently this line was extended farther to the storage yards established by the Lehigh Coal & Navigation Company, some distance east of Hauto, and to other points in the vicinity thereof.

In July, 1912, the lines of the Lehigh & New England Railroad having been constructed from Danielsville in Northampton County,

to Tamaqua, a distance of about 35 miles, that company was granted trackage rights over the Panther Creek Railroad and at once began the operation of its trains thereover, thus affording an entirely new and independent means of communication to and from the Panther Creek Valley. The extension of the Lehigh & New England Railroad to Tamaqua was commenced in 1910 and completed, as above stated, in July, 1912. It was intended that the Lehigh and New England 770
Railroad, upon the completion of its line to Tamaqua, should acquire the Panther Creek Railroad and make it a part of its system, although no formal action was taken, but the consummation of this plan was deferred temporarily, and instead a trackage agreement for the term of one year was made on May 14th, 1912, effective June 1st, 1912. At or about the time of the expiration of the trackage agreement and before this suit was commenced it was determined to carry the original plan into execution, and arrangements were made for the incorporation of the Panther Creek Railroad Company, and thereupon all the tracks theretofore owned and operated under the name of the Panther Creek Railroad—in all about 52 miles, as well as all the equipment used in the operation thereof, 15 engines, 160 cars, and all other railroad appliances—were sold and transferred to the Panther Creek Railroad Company, and immediately thereafter the property and franchises of that company were merged and consolidated with those of the Lehigh & New England Railroad.

The price paid by the Panther Creek Railroad Company for the property and franchises, excepting the equipment, was $250,000, 771
subject to the payment of a yearly rent of $109,123.28, and the further sum of $262,253.23, being the appraised value of the equipment. The cash payment of $250,000 represented the fair value of the right of way, which had never been charged upon the books of the company, and the yearly rental of $109,123.28 represents 8 per cent upon the actual cost of the tracks, tunnel, and other necessary appurtenances. There was no increased valuation placed upon the property when it was merged and consolidated with the Lehigh & New England Railroad. By reason of the merger and consolidation of the property and franchises of the Panther Creek Railroad Company with the property and franchises of the Lehigh & New England Railroad Company the latter now owns and operates all the railroads and railroad property heretofore operated as the Panther Creek Railroad, and thus gives to the inhabitants and industries formerly served by it an additional and independent means of transportation to and from all points on the lines of the Lehigh & New England system, including New York, tidewater, as well as to and from points reached via the Lehigh Valley; Delaware, Lackawanna & Western; Pennsylvania; New York; Susquehanna & Western; Erie; New York; Ontario & Western; West Shore, and New York, New Haven & Hartford Railroad Companies, all of which lines are reached by the 772
Lehigh & New England Railroad and connected therewith.

The lines shown upon the map submitted by the Government marked "Panther Creek R. R." should be shown as a part of the Lehigh & New England system.

The line shown upon said map as extending from Mauch Chunk to Lansford and marked "C. R. R. of N. J." should be eliminated, as same does not exist.

Mr. KINGSBURY. It is understood that certain corrections will be made in the map heretofore offered by the Government.

Mr. REYNOLDS. Counsel for the defendants say that they assume no responsibility for that map, because it is inaccurate and will be so proven by the defendants when they come to put in their evidence.

Mr. KINGSBURY. Mr. Drinker, you were also going to furnish us with a statement about the relations between the Lehigh Coal & Navigation Company and the Lehigh & New England Railroad.

Mr. DRINKER. Mr. Turner will furnish that.

Mr TURNER. I understood you to ask for a statement with regard to the Lehigh & New England Railroad, and that has been prepared.

Mr. Turner submitted the following statement:

773 "The Lehigh & New England Railroad Company is the successor of numerous railroad corporations, the first of which was created by a special act of the Legislature of New Jersey, in 1873, under the name of the Boston & South Mountain R. R. Co. This company, in conjunction with a similar corporation organized under the laws of Pennsylvania, contemplated the construction and operation of a line of railroad extending from Harrisburg, Pa., to a point in the State line between New Jersey and New York, and thence to the Hudson River, at or near Poughkeepsie, with a view of connecting with a railroad then under consideration, which contemplated the construction of what is now generally known as the Poughkeepsie Bridge Railroad. All of these railroads met with financial troubles and were not completed until 1889, or thereabouts. At that time the idea of extending to Harrisburg was temporarily abandoned, and the line as actually constructed by the Pennsylvania, Poughkeepsie & Boston Railroad Company extended from Slatington, in the State of Pennsylvania, a short distance from the anthracite coal fields, across the States of Pennsylvania, New Jersey, and New York to a point of connection with the Erie Railroad at Pine Island, New York, and thence over the tracks of the Erie Company to Campbell Hall, where connection was made with the Philadelphia, Reading & New England Railroad, which had constructed a line from that point across the Hudson River and owned and operated a railroad extending as far east as Hartford.
774 Both of these lines were at that time owned by practically the same interests and had no financial or other affiliations with other railroad companies. The purpose of these railroads was to handle traffic to and from New England so as to avoid the delays, difficulties, and expense incident to the route via New York Harbor and the Harlem River gateway. For a time during the period when Mr. McLeod was president of the Philadelphia & Reading a large amount of traffic, principally anthracite coal, was shipped to New England via the Poughkeepsie Bridge gateway, but later on these shipments were discontinued and such trackage or other rights as the Philadelphia & Reading Company had in this route were abandoned. This was followed by foreclosure proceedings and the eventual sale of both lines, the Pennsylvania, Poughkeepsie & Boston to the Lehigh & New England Railroad Company"—I am not giving you the legal details, just the effect—"and the Philadelphia, Reading & New Eng-

land to the Central New England Railroad Company, the latter subsequently being acquired by the New York, New Haven & Hartford Railroad Company, which rebuilt the Poughkeepsie Bridge and otherwise improved the property and increased its business to an extent beyond that contemplated by its projectors. The Lehigh & New England Railroad acquired the property and franchises of the Pennsylvania, Poughkeepsie & Boston Railroad Company in April, 1895, and since that time has improved and extended its lines to such an 775
extent that the gross earnings, which were about $50,000 per annum during the first few years, have increased to $1,793,785.14 for the year ending June 30, 1913. This growth has been due very largely to the construction of branch lines, to the great slate and cement industries in Northampton County, Pennsylvania, practically all of which are now reached by the Lehigh & New England lines, and most of which, prior to the extensions, were served only by the Bangor & Portland Railway, which about 1901 was acquired by the Delaware, Lackawanna & Western Railroad Company.

"From the classification of tonnage statement hereto attached, it will be noted that the tonnage handled by the Lehigh & New England Railroad for the year ended June 30, 1913, amounted to 2,858,165 tons, as compared with 1,810,340 tons for the year ended June 30, 1912, and that the principal items of this tonnage for the year June 30, 1913, consisted of cement, brick, and lime 898,208 tons; anthracite coal 780,297 tons; bituminous coal 537,020 tons; and stone, sand, and like materials 356,253 tons. The anthracite tonnage amounted to but 27 per cent of the total, and for the year shows an increase over 1912 of about 468,000 tons out of a total increase of 1,048,000 tons. In this connection it should be borne in mind that the Tamaqua Extension, to the mines of the Lehigh Coal & Navigation Company, 776
was not completed until July 1, 1912.

"From the year 1900 the Lehigh & New England Railroad has been vigorously fighting for business in every direction and with this end in view has extended its lines to slate quarries and cement mills in Northampton County and to other industries elsewhere, which, prior thereto, were reached in many cases exclusively by one or another of the following lines: Delaware, Lackawanna & Western; Central Railroad of New Jersey; Pennsylvania; and Lehigh Valley. In 1910 it commenced the construction of its line to the anthracite coal fields and completed same about July, 1912. In 1911 it made a trackage agreement with the New York, Susquehanna & Western Railroad, effective July 1, 1912, under which it operates its own trains for the handling of anthracite coal to New York tidewater. It is now engaged in the construction of a branch line to Catasauqua, Pa., which will tap the Empire Steel & Iron Company, and other large industries in that locality, now served by the Central Railroad of New Jersey, Lehigh Valley, and Philadelphia & Reading Companies. It is also building a branch line to the great plant of the New Jersey Zinc Company at Hazard, Carbon County, which is served exclusively by the Central Railroad of New Jersey, and is ready and willing to extend its lines in the territory covered by its chartered rights, 777
without fear or favor, wherever the tonnage justifies it in so doing. It is now, and always has been, an independent line, due to the fact that it has no alliances of any character with any other railroad com-

pany. This position of independence is due, in large measure, to the fact that it has direct connection with practically every trunk in the eastern part of Pennsylvania and vicinity, namely, with the Philadelphia & Reading at Tamaqua and Slatington; with the Lehigh Valley at Lizard Creek, Slatington, and Scranton; with the Central Railroad of New Jersey at Hauto and Bethlehem; with the Pennsylvania at Martins Creek; with the Delaware, Lackawanna & Western at Bath, Bangor, Portland, and Augusta; with the Northampton & Bath at Bath; with the New York, Susquehanna & Western at Hainesburg Junction and Sussex; with the Erie at Goshen; and with the New York, Ontario & Western, West Shore, and New York, New Haven & Hartford at Campbell Hall, New York.

"Practically all the tonnage handled by the Lehigh & New England originates or terminates on its lines, which cover a territory teeming with great industries.

"The main line extends from Slatington, Pa., to Campbell Hall, New York, and from this line there are many branches, the most important of which are the Tamaqua Extension, which comprises the railroads formerly operated as the Panther Creek Railroad in the Panther Creek Valley and vicinity; the Hazard Branch, now under construction to the plant of the New Jersey Zinc Company; the
778 Bethlehem Branch, extending from Benders Junction to the borough of Bethlehem; the Martins Creek Branch, extending from a point west of Bath to Martins Creek, where connection is made with the Pennsylvania Railroad; the Catasauqua Branch, now under construction, extending to the plant of the Empire Steel & Iron Company, and other industries in the vicinity of Catasauqua; the Saylorsburg Branch, extending through the Wind Gap to Saylorsburg, forming part of a contemplated line to Stroudsburg; the Bangor Branch, extending to Bangor, and the slate industries in the vicinity; the Nazareth Branch, extending to Nazareth in the heart of the cement industry; the East Bangor Branch, extending to East Bangor and its adjoining slate quarries.

"The mileage operated by the Lehigh & New England Railroad Company aggregates 268.75 miles, of which 172.41 miles are owned, and the balance, 96.34 miles, are operated under trackage agreements with the New York, Susquehanna & Western and Erie Companies. The Lehigh & New England is an active competitor of the Central Railroad of New Jersey, Lehigh Valley, Pennsylvania, Delaware, Lackawanna & Western, and New York, Susquehanna & Western Companies. The operation of the road is conducted by a staff of officers and employees under the direction of the superintendent, whose office is located at Bethlehem; the traffic, accounting, engineer-
779 ing, and other operating departments are also located at Bethlehem.

"The relation of the Lehigh & New England to the Lehigh Coal & Navigation Company, aside from the question of stock ownership, is simply that of a common carrier, and in the actual conduct of its operations there is no difference whatever between the methods employed in the handling of the shipments of the Lehigh Coal & Navigation Company, which now constitute but a small proportion of its business, and prior to July 1st practically none at all, and those of any other shipper. In the case of Lehigh Coal & Navigation Company shipments, the methods prescribed by the Interstate Commerce Com-

mission and the public service commissions of Pennsylvania, New Jersey, and New York are strictly complied with, as is also the case with respect to all its other business.

"The Lehigh & New England Railroad forwards the tonnage originating on its lines in accordance with the instructions received from its shippers, and there is no discrimination in favor of any of its connections, with all of whom it has tariffs and traffic arrrangements, such as is usual with railroad companies. Its inbound tonnage is received from all of its connections, and there are no restrictions of any character as to the routing of same."

Mr. COUDERT. May I ask you, aside from the directors and officers which the Lehigh Coal & Navigation Company and the Lehigh & New England Railroad Company have in common, have they any other 780
employees or persons in their service in common?

Mr. TURNER. Not that I am aware.

Mr. COUDERT. If there are any such, will you let me know of the fact?

Mr. TURNER. Yes.

Mr. COUDERT. Any persons who have an employment from both companies in any capacity.

Mr. TURNER. I think the only one—Mr. Drinker reminds me of it—is the superintendent, Mr. E. H. Shipman, who holds what we consider that honorary position of superintendent of the canals.

Mr. COUDERT. He is both in the employ of the Lehigh Coal & Navigation Company and the railroad company?

Mr. TURNER. I think he receives no compensation from the navigation company for that honorary position.

Mr. COUDERT. His compensation is paid by the railroad?

Mr. TURNER. By the Lehigh & New England Railroad.

Counsel for the Government reads in evidence, from the annual report for the year ended December 31, 1913, of the Lehigh Coal & Navigation Company, the list of managers and officers, as follows:

President, S. D. Warriner.

Managers.—Samuel Dickson, Bayard Henry, Lewis A. Riley, John 781
S. Wentz, Henry Pratt McKean, R. Dale Benson, Erskine Hewitt, Edw. Walter Clark, Richard Y. Cook, C. S. W. Packard, S. D. Warriner, George H. Frazier.

Officers elected by the board of managers.—Vice presidents, Rollin H. Wilbur, Edwin Ludlow; vice president and secretary, H. F. Baker; assistant secretary, R. V. Pierce; treasurer, Henry H. Pease; assistant treasurer, O. E. Neff; comptroller, E. M. Reynolds; assistant comptroller, J. C. Campbell.

Also certain short passages marked on pages 7, 8, and 11 of the same report, which is in evidence. The passages read are as follows:

COAL MINING DEPARTMENT.

The production of coal by your company and its tenants during the past two years (stated in gross tons) was as follows:

782

	1913	1912
	Tons.	*Tons.*
Mined by company	3,612,711	3,241,388
Recovered from culm banks by company	711,851	432,557
Total produced by company	4,324,562	3,673,945
Less fuel consumed by company	521,495	398,361
Commercial coal produced by company	3,803,067	3,275,584
Mined by lessees of company	209,018	183,892
Recovered from culm banks by lessees of company	12,673	23,345
Total produced by lessees of company	221,691	207,237
Less fuel consumed by lessees of company	29,991	25,732
Commercial coal produced by lessees of company	191,700	181,505
SUMMARY.		
Total mined by company and its lessees	3,821,729	3,425,280
Total recovered from culm banks by company and its lessees	724,524	455,902
Total produced by company and its lessees	4,546,253	3,881,182
Less fuel consumed by company and its lessees	551,486	424,093
Total commercial coal produced by company and its lessees	3,994,767	3,457,089

783 (Page 11:) "During the year the railroad in the Panther Creek and Nesquehoning Valleys owned by your company, and generally known as the Panther Creek Railroad, was sold to the Panther Creek Railroad Company, which was thereafter merged and consolidated with the Lehigh and New England Railroad Company."

Counsel for the Government also reads from the report of the Lehigh and New England Railroad Company for the year ended June 30, 1913, the list of directors and officers, as follows:

LEHIGH AND NEW ENGLAND RAILROAD COMPANY.

Board of directors.—Lewis A. Riley, Samuel Dickson, Bayard Henry, John S. Wentz, Edward Walter Clark, Richard Y. Cook, Wm. Jay Turner, Edward J. Dox, George H. Frazier.

Officers.—S. D. Warriner, president; Rollin H. Wilbur, vice president and general manager; Wm. Jay Turner, vice president and general counsel; H. F. Baker, vice president and secretary; Henry H. Pease, treasurer; E. M. Reynolds, Comptroller.

784 Counsel for the Government also reads, from the report of the Lehigh & Hudson River Railway Company, for the year ended June 30, 1913, the list of directors and officers, as follows:

Directors.—George F. Baer, Robert W. DeForest, George D. Dixon, Thomas P. Fowler, George H. Frazier, Lewis A. Riley, Morris Ruth-

rfurd, Edward T. Stotesbury, Eben B. Thomas, William H. Truesdale, Frederick D. Underwood, Samuel D. Warriner, Rollin H. Wilbur.

Officers.—Lewis A. Riley, president; Morris Rutherford, vice president and general manager; John Sayer, secretary and treasurer. General office, Warwick, New York; Philadelphia office, 437 Chestnut Street.

Counsel for the Government also offer in evidence a statement furnished by Mr. Heebner, in regard to the Philadelphia & Reading Terminal Railroad Company, as follows:

The Philadelphia and Reading Terminal Railroad Company was incorporated in April, 1888, at the instance of the Philadelphia and Reading Railroad Company. It has an outstanding full-paid capital 785
stock of $8,500,000, consisting of 170,000 shares of a par value of $50 each. It owns a valuable passenger terminal and office building in the heart of the city of Philadelphia at 12th and Market Streets, and its railroad extends, on an elevated structure, from the terminal building northeastwardly to a point of connection with the line of the Philadelphia, Germantown and Norristown Railroad Company (held by Philadelphia and Reading Railway Company under long-term lease) near Fairmount Avenue, Philadelphia; with a branch line extending by a curve to the north and west from a point near Pearl Street to a point of junction with the line of Philadelphia and Reading Railway Company on Noble Street, between Thirteenth and Broad Streets, in that city.

Its terminal station and railroad property were acquired and constructed between 1891 and 1893 at a cost of more than $8,500,000 in cash.

Almost all the money for this acquisition and construction was procured in the following manner and as a result of the following financial and business arrangement:

Two thousand five hundred of the terminal company's stock having been issued at par for cash, the Philadelphia and Reading Railroad Company acquired the remaining 169,950 shares (of an aggregate par value of $8,497,500) by issuing and delivering to the terminal company a series of the Philadelphia and Reading Railroad Com- 786
pany's $1,000 bonds, amounting in the aggregate to $8,500,000, dated May 1, 1891, payable May 1, 1941, with interest thereon, payable quarterly, at the rate of 5 per centum per annum. These bonds were debentures and were secured by a deposit or pledge with the Provident Life and Trust Company, of Philadelphia, trustee, of the 169,950 shares of the capital stock of the terminal company so acquired. This pledge is made by an indenture dated May 1, 1891. The terminal company guaranteed the payment of the principal and interest of these bonds and, to secure the due performance of this contract of guaranty which was endorsed on every one of the bonds, conveyed in trust to the Provident Life and Trust Company, of Philadelphia, trustee, by indenture, dated May 1, 1891, all its property, railroad and franchises, including the contract and lease now to be mentioned.

By indenture dated May 1, 1891, between the Philadelphia and Reading Terminal Railroad Company, the Philadelphia and Reading

Railroad Company, and the Provident Life and Trust Company, of Philadelphia, trustee, there were granted and demised to the Philadelphia and Reading Railroad Company, and its successors, for a period of 999 years from and after May 1, 1891, the *sole* and *exclusive* right of holding, using and enjoying *all* the railroad and property then owned, or which thereafter might be acquired, by the terminal
787 company, together with all franchises, rights, privileges, and immunities thereto belonging or appertaining, to the extent that the same might be necessary or convenient to enable the said grantee to have, possess, use, and enjoy all the rights and privileges by this agreement demised and granted.

All these transactions were in pursuance of a single plan and the three indentures above mentioned were executed and delivered on the same day, May 1, 1891.

The bonds thus issued, guaranteed, and secured were considered a first-class security and were readily marketed.

The *practical* result and effect, however, of this whole arrangement was substantially this, that, without incurring any further obligation than it would have had if it *owned* the property absolutely; that is to say, the obligation to maintain, to keep in repair, to pay all taxes and assessments, to operate for public use, from time to time to pay the stipulated interest on its *own* bonds amounting to $8,500,000 and to pay the principal thereof at maturity, the Philadelphia and Reading Railroad Company acquired the sole and exclusive right to hold, use, enjoy, and operate in the service of the public, for a period of 999 years from and after May 1, 1891, this valuable terminal railroad property situated in the heart of the city
788 of Philadelphia; a property that cost more than $8,500,000 in cash to acquire and construct and that was essential to the business of the grantee's own line of railroad and to the growth and development of the same; and a property from a part of which, because of its fortunate central location, large revenue could be obtained from leases and grants of privileges for subordinate uses not inconsistent with the property's use and efficiency as a terminal *railroad* property.

Upon the sale under foreclosure, in 1896, of the property and and franchises of the Philadelphia and Reading Railroad Company, including, inter alia, its leasehold interests and its rights under contracts and agreements, the purchasers thereat acquired and conveyed to Philadelphia and Reading Railway Company all the rights and privileges formerly held by the said railroad company under and by virtue of the above mentioned tripartite agreement of May 1, 1891; and the railway company wrote on its books an assumption of the said $8,500,000 bonds of the Philadelphia and Reading Railroad Company. And the railway company thus acquired—*substantially* without incurring any further obligation in respect of the property than it would have had if it *owned* it absolutely—the sole and exclusive right to hold, use, and enjoy, for a period ending 999 years from and after May 1, 1891, all this valuable terminal railroad property from *parts* of which alone, that are not used for railroad purposes, including, inter alia, the market house stalls, the cold storage rooms, the business storerooms, etc., etc., it receives a *net* income of about
789 $180,000 a year.

The ownership of the stock of the Philadelphia and Reading Terminal Railroad Company—subject to the pledge thereof to the trust

company to secure the $8,500,000 bonds originally issued by Philadelphia and Reading Railroad Company—became vested in *Reading Company* upon reorganization in November, 1896.

Counsel for the Government also offer in evidence the statement furnished by Mr. Heebner in regard to the manner of voting the stocks owned by the Reading Company as follows:

The shares of stock owned by Reading Company in other corporations, and not pledged under mortgages or deeds of trust, are voted at the annual or other meetings of the stockholders thereof by means of proxies executed by the president or vice president of Reading Company and attested by the secretary or an assistant secretary thereof, to some person or persons therein specifically designated. Occasionally Mr. Baer is made the proxy to vote these shares at such meetings as he may attend, but more generally it is some one other than he. This includes a majority of the subsidiary companies.

In the case of shares which have been pledged under a mortgage or deed of trust, the trustee of such indenture executes jointly with Reading Company the necessary proxy or proxies for use at stockholders' meetings. Mr. Baer has also occasionally voted these proxies at meetings attended by him, but in the great majority of cases it is some person or persons other than he. Included in this class are the shares of the following-named corporations: Philadelphia and Reading 790
Railway Company, the Philadelphia and Reading Coal and Iron Company, the Central Railroad Company of New Jersey, the Wilmington and Northern Railroad Company. Of course, where shares are pledged under a mortgage or deed of trust, the certificates representing these shares are duly registered in the name of the trustee, and each registration contains a statement of the particular trust under which the shares are held.

I enclose herewith forms of proxies which are most generally used by Reading Company for the above purpose:

"*Know all men by these presents:*

"That Reading Company hereby appoints ..... to be its substitute and proxy, for it, and in its name and behalf, to vote at the election for president and directors or other officers of ..... and on any other business of the said company, at the meeting of the stockholders to be held on .....

"In witness whereof the said Reading Company has caused to be hereunto affixed its corporate seal, duly attested by its president and secretary, this .... day of ..... A. D. ..

"READING COMPANY,
"By ....., *President.*

"Attest:
"....., *Secretary.*"

"*Know all men by these presents:* 791

"That Reading Company and the Central Trust Company of New York, as trustee under mortgage of Reading Company and the Philadelphia and Reading Coal and Iron Company, dated January 5th, 1897, hereby appoint ..... to be their substitute and

proxy for them, and in their names and behalf to vote at the election for president and directors or other officers of ..... and on any other business of the said company, at the meeting of the stockholders to be held on ..... but not for any purpose inconsistent with the provisions or purposes of said indenture.

"In witness whereof the said Reading Company and Central Trust Company of New York have caused to be hereunto affixed their corporate seals, duly attested, this .... day of ..... A. D., 1 ..

"READING COMPANY,
"By ....., *President.*

"Attest:
"....., *Secretary.*
"CENTRAL TRUST COMPANY OF NEW YORK,
"By ....., *Vice-President.*

"Attest:
"....., *Secretary.*"

792 "*Know all men by these presents:*

"That Reading Company and the Pennsylvania Company for Insurances on Lives and Granting Annuities as trustee under Jersey Central collateral trust deed of Reading Company, dated April 1, 1909, hereby constitute and appoint Geo. F. Baer, George F. Baker, Charles Steele, and Robert W. de Forest, or either of them, to be their substitute and proxy, for them, and in their names and behalf to vote at the election of directors of the Central Railroad Company of New Jersey and on any other business of the said company, at the meeting of the stockholders to be held on Friday, September 19th, 1913, or at any adjournment of said meeting, but not for any purpose inconsistent with the provisions or purposes of said indenture.

"In witness whereof the said Reading Company and the Pennsylvania Company for Insurances on Lives and Granting Annuities have caused to be hereunto affixed their corporate seals, duly attested, this sixth day of August, A. D. 1913.

"READING COMPANY,
"By ....., *Vice President.*

"Attest:
"....,
Secretary.
"THE PENNSYLVANIA COMPANY FOR INSURANCES ON LIVES AND GRANTING ANNUITIES,
"By ....., *President.*

"Attest:
"....., *Secretary.*

*793 "*Know all men by these presents:*

"That Reading Company and Girard Trust Company, as trustee under the Wilmington and Northern Railroad stock trust agreement, dated March 1, 1900, hereby appoint ..... to be their substitute and proxy, for them, and in their names and behalf to vote at the election for directors or other officers of the Wilmington and Northern Railroad Company and on any other business of the said company, at the meeting of the stockholders to be held on

* So numbered in original.

Monday, May ...., 191.., but not for any purpose inconsistent with the provisions or purposes of said agreement.

"In witness whereof the said Reading Company and Girard Trust Company have caused to be hereunto affixed their corporate seals, duly attested, this .... day of ....., A. D. 19..

"READING COMPANY,

"By ....., *President.*

"Attest:

"....., *Secretary.*

"GIRARD TRUST COMPANY,

"By ....., *President.*

"Attest:

"....., *Secretary.*"

Counsel for the Government reads in evidence from the record *796 in the old Reading case the following further extracts:

From Vol. II, pages 712, 713, extract from the report of the Philadelphia & Reading Railroad Company for 1893, as follows:

Every effort has been made to extend the business which the railroad company exchanges with its connecting railroads. So great a volume of freight traffic originates at the Reading Company's mines and in the busy region whose iron and other manufactured products seek an outlet to market over its railroads, and this region furnishes so large a market for food products, articles of clothing, and an infinite variety of manufactured products that connecting railroads will always be glad to carry freight destined from or to the Reading Company's territory. The management does not feel, therefore, that there is any risk of the crippling of the development of the business of the Reading companies because they no longer control the railroads or the coal mines that have lately been detached from their system. On the contrary, they have felt great relief in having no longer to provide for the financial requirements of these properties, and they find the management of the remaining property is sufficient to require their best efforts and all the capital they can command. They feel that no further acquisitions of railroads or *797 mining property should be contemplated in the near future, and hope that if they can secure a reasonable share of the growth of the country's business and can conduct it with economy and prudence, they will be doing all that is possible to build up the value of the securities of the two Reading companies.

The relations with all connecting railroads are friendly and cordial, and in respect to the principal railroad systems which were lately in close alliance with the Reading Company, the exchange of business and the division of earnings arising therefrom is made on the same lines as before the leases of 1892, and in accordance with the rules that have been agreed upon during many years of more or less active rivalry.

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* So numbered in original.

From Vol. IV, marked passage on page 206, from the examination of Marshall E. Johns, superintendent of the New York, Susquehanna & Western Railroad Company at the time of his examination, as follows:

Q. The New York, Susquehanna and Western acquired terminals at Edgewater at what time?—A. They were constructed some time in the year 1893, and operations started some time in the year—the terminal time table of the Edgewater Branch, No. 1, was dated September 11, 1894, so it was about that time that the work had been completed and the terminal ready for occupancy.

798 *From the same volume, pages 244 and 245 as marked, from the examination of Frank E. Smith, a freight agent of the Erie Railroad Company at the time of his examination, as follows:*

By Mr. McReynolds:

Q. When did you first become acquainted with the New York, Susquehanna and Western Road?—A. In December, 1894, as near as I can remember.

Q. When was the road constructed?—A. I am not familiar with the periods at which the different sections of the road were finished. That was all done prior to my connection with it.

Q. You went with the road in 1894?—A. Yes, sir.

Q. Where were its lines?—A. Its lines extended from what was known as West End or Marion, New Jersey.

Q. Is that on the bay?—A. No; it is about three miles west of Jersey City.

Q. On the Pennsylvania lines?—A. It was the point of connection with the Pennsylvania lines. The lines extended west to Wilkes-Barre, Pennsylvania, with the branch extending from Two Bridges to Middletown, New York, another branch of about three miles in New York, from Passaic Junction to Passaic, and also the Edgewater Branch running from Middletown to Edgewater three miles, and the only part constructed while I was with them was a little spur, about a mile long, running into Lodi, and what is known as the Susquehanna Connecting Railroad up in the coal regions connecting with the coal properties.

799 Q. Was this little Susquehanna connecting road constructed after you went with the Susquehanna?—A. Yes, sir; that was constructed afterwards.

Q. When you first went with the Susquehanna it got into Jersey City over the tracks of the Pennsylvania Road, did it?—A. Do you refer to freight or passenger or both?

Q. Both.—A. Yes, sir; it got over the Pennsylvania Railroad tracks.

Q. It had an arrangement with the Pennsylvania Railroad under which it used the Pennsylvania terminal at Jersey City?—A. Yes, sir.

Q. This terminal at Edgewater, when was that constructed?—A. It was finished when I went with the company, and I think it was finished along in 1893, or possibly the first part of 1894.

From Vol. V, marked passage on pages 742, 743, and 744, from the examination of David G. Baird, secretary of the Lehigh Valley Railroad Company at the time of his examination, as follows:

Q. Since the construction of the Easton and Amboy, has the Lehigh Valley constructed a system of road connecting that road from a junction at South Plainfield with its New York Harbor system at Jersey City?—A. Yes, sir.

Q. Taking that up now as it was constructed, what was the Roselle 800
and South Plainfield Railroad Company?—A. The Roselle and South Plainfield Railroad was organized in 1885 by the Lehigh, and built a line from South Plainfield to Roselle, on the Central Railroad of New Jersey.

Q. What year was that?—A. It was incorporated in 1885.

Q. How was that financed?—A. The road was built by capital advanced by the Lehigh Valley Railroad Company, who took the stock of the Roselle and South Plainfield Railroad Company.

Q. When you say advanced in these cases, you mean the cost of construction was the amount that was advanced?—A. I do.

Q. As the road was built the bills were paid through the Lehigh Valley Railroad Company offices, by advances to the subsidiary roads?—A. That is right.

Q. And the subsidiary roads issued from time to time to the Lehigh Valley Railroad Company capital stock in amounts equal to the advances, dollar for dollar?—A. Yes, sir.

Q. That is the truth as to all of these railroads that constitute this system that we are now talking about?—A. It is.

Q. Except in one or two instances, which I will ask you to mention.—A. In a general way, that is right.

Q. What was the Jersey City Terminal Railroad?—A. The Jersey City Terminal Railway Company was organized in 1888 to build a terminal line on the property which the company had acquired to Jersey City, for a freight terminal, and it reaches from a junction with the National Docks Railway eastward to the exterior line of our piers 801
in New York Harbor.

Q. Was this financed in just the same way?—A. In the same way.

Q. Where are the freight terminals in Jersey City located?—A. They have a frontage on the Hudson River and south of what is called the Gap, south of the Morris Canal Gap at Jersey City, and adjoin the Central Railroad of New Jersey on the north.

Q. How extensive a terminal is that?—A. It is quite extensive.

Q. What frontage on the river?—A. Perhaps 1,500 feet. I am not quite clear as to that measurement.

Q. And extending back into Jersey City a long distance?—A. To the mainland of Jersey City; about a mile or more.

Q. It is all built up with tracks and warehouses and engine houses and the various things that go to make up a large railway terminal?—A. Yes, sir.

Q. It is not a passenger terminal, but is entirely a freight terminal?—A. Entirely a freight terminal.

Q. Besides fronting on the river it also fronts on what you call the Gap?—A. Yes, sir.

Q. Which is a navigable water with several piers extending into it?—A. Yes, sir.

Q. All of which are connected with the railway system?—A. Yes, sir.

802 Q. That is owned by the Lehigh Valley Railroad now of New Jersey?—A. The Lehigh Valley Railroad Company of New Jersey.

Also from Vol. V, pages 735 and 736, the marked passage from the testimony of David G. Baird, as follows:

Q. The Delaware, Susquehanna & Schuylkill Railroad; what is that?—A. That is a railroad entirely within the Lehigh coal district, and is a gathering railroad.

Q. What are its terminal points?—A. Stockton Junction, or Lumber Yard, on the eastern end where it forms a connection with the Lehigh Valley Railroad, and goes westward to Drifton, Eckley, and Lattimer on the north, to Oneida on the west, and also Tomhicken.

Q. It reaches a large number of coal mines?—A. It does.

Again from Vol. II, marked passages on pages 310, 311, 312, and 313, from the examination of Luther C. Smith, as follows:

Q. Where do you reside?—A. Selinsgrove, Pa.

Q. What is your present occupation?—A. Out of occupation just now; resting.

Q. You were once an officer of Coxe Bros. & Co. and of the Delaware, Susquehanna & Schuylkill Railroad, were you not?—A. Yes, sir.

(*Page 311.*)

Q. What collieries were located on the Delaware, Susquehanna & Schuylkill Railroad, or were near enough to it to be served by it in
803 the ordinary course of business?—A. Near enough to be served but not served, do you mean?

Q. You can divide your answer into two parts. You can first name the collieries which were on it and which were served by it, and then you can name those which could be served.—A. The Delaware, Susquehanna & Schuylkill Railroad was built for the purpose of taking care of the Coxe collieries, composed of Drifton, Eckley, Stockton, Beaver Meadow, Tomhicken, Derringer, and Oneida. In addition to that, the Delaware, Susquehanna & Schuylkill Railroad handled the product from what we will call the Pardee operations.

(*Page 312.*)

Q. Do you recall, roughly, the annual tonnage which was carried from these collieries by the Delaware, Susquehanna & Schuylkill Railroad?—A. For your purpose, I think, if I state a million and a quarter I would be about right.

Q. From all of those collieries?—A. Yes, sir.

Q. Coxe Bros. as well as the Pardees?—A. Yes, sir; that would have made the probable yearly shipment over the Delaware, Susquehanna & Schuylkill Railroad.

Q. There were some other collieries, were there, which, while not served by the Delaware, Susquehanna & Schuylkill, were near enough to it to be served in the ordinary course of business if their owners had so desired?—A. Yes, sir; of course, you will understand that in each instance there would have had to have been more or less track run to reach them. There were cases where the distance would not have been unreasonable. 804

Q. Can you name the most of those?—A. G. B. Markle & Co.'s Highland breaker; G. B. Markle & Co.'s Jeddo breaker (rather known as Highland No. 5), located at Jeddo mine—people call it the Jeddo breaker; G. B. Markle & Co's Oakdale breaker. Then the Wentz people had a breaker. They had a breaker located at Hazelbrook; I do not know as they had any particular name for it. In those days the Van Wickle operations at Melonsville and Coleraine had two breakers. I think that covers all, with the possible exception of a little affair that was built during the time, which I am not sure was a going concern. That is, it was not of any magnitude at the time, and I forget the names of the operators.

Q. Which railroads did the Delaware, Susquehanna & Schuylkill connect with?—A. They connected with the Lehigh Valley.

Q. At what point?—A. At a number of points—Drifton, Stockton, Harleigh Junction, Oneida Junction, Lumber Yard; those were all the connections I can think of at this time.

Q. What other railroads did it connect with?—A. It connected with the Pennsylvania Railroad at Gum Run; connected with the Philadelphia & Reading Railroad at Roan.

Q. It does not connect with the Central Railroad of New Jersey?—A. It did connect with the Central Railroad of New Jersey at Drifton, but that branch or portion of it was abandoned, and for some years now there has really been no connection with the Central Railroad of New Jersey.

Q. You mean by that that it is not used?—A. It is not used, and can not be used. It would require a rebuilding of the branch to make it fit for use. 805

(*Page 313.*)

Q. But you exchanged no freight, as a matter of fact, with the Central of New Jersey at Drifton after, I believe you said, seven or eight years ago—you do not know the date any more definitely than that?—A. No, sir; but I will say that I do not believe we ever exchanged any freight with the Central Railroad of New Jersey during my time.

Q. But it was possible?—A. It was possible until the time that they abandoned the branch.

Q. When the branch was abandoned, do you mean that the tracks were torn up or that it was just allowed to fall into disuse?—A. No; my recollection is—the rails, I guess you mean—the rails and ties were there; the ties, of course, entirely rotten, and the track was in such a bad shape that it would have been entirely out of the question to run an engine over it.

Q. I say it was just allowed to fall into disuse and gradually become worthless?—A. Worthless, as a matter of operation; yes, sir.

Q. But it was not torn up at a single stroke, and for some time after the Delaware, Susquehanna & Schuylkill, as a matter of fact,
806 ceased exchanging freight with the Central Railroad of New Jersey, it could have done so over that track before it did become worthless, could it not?—A. Oh, yes.

Counsel for the Government also offer in evidence certain extracts from the minutes of the Central Railroad Company of New Jersey and the Lehigh and Wilkes-Barre Coal Company, as follows:

Extract from the minutes of a meeting of the board of directors of the Central Railroad Company of New Jersey, held August 11, 1890.

The following correspondence was read and ordered on the minutes:

NEW YORK, *August 4, 1890.*

A. A. McLEOD, Esq.,
President Philadelphia & Reading R. R. Co.,
Philadelphia, Pa.

DEAR SIR: It is rumored that your company contemplate the construction of a railroad from Bound Brook or its vicinity easterly towards New York, and parallel to the road of this company; and that you are aiding and participating with others in the projection of such a road, and that it is the purpose of its projectors to use the same for traffic passing over the Delaware and Bound Brook Railroad, and which would otherwise pass over the road of this company. Such a road would certainly be a competing road to the "Central"
807 and for either party to the agreements of March 30, 1876, March 17, 1879, and July 27, 1886, to aid or countenance in any way the construction of such a road, and for the purpose designated, would be a violation by such party to the spirit and letter of the agreements referred to.

The object of this communication is to inquire whether there is any, and if any, what foundation for the rumor referred to.

Very truly,

J. R. MAXWELL, *President.*

PHILADELPHIA, *August 8, 1890.*

Mr. J. R. MAXWELL,
President Central Railroad Company of New Jersey,
119 Liberty Street, New York.

DEAR SIR: I have your favor of the 4th instant, referring to a rumor that this company contemplates the construction of a railroad from the vicinity of Bound Brook easterly toward New York.

We have never contemplated for a moment the aiding nor participating with others in the promotion of any enterprise that would place the line in competition with the Jersey Central. What is to be
808 done, if anything, will be under the sole control of this company so that it will be altogether subject to the obligations of existing contracts.

Yours, truly,

A. A. McLEOD, *President.*

Extract from minutes of a meeting of the stockholders of the Central Railroad of New Jersey held May 11th, 1900, showing authorization of the guarantee by the railroad of the bonds of the Lehigh & Wilkes-Barre Coal Co. and the reasons therefor.

Whereas the Lehigh & Wilkes-Barre Coal Company has heretofore duly authorized the issue of its consolidated mortgage bonds, dated April 27, 1875, secured by a mortgage of even date to the Fidelity Insurance, Trust and Safe Deposit Company of Philadelphia, which bonds fall due on June 1, 1900; and

Whereas the said coal company owns and works mines on the line of and adjacent to the railroad branches and works of the Lehigh Coal and Navigation Company in the State of Pennsylvania, leased by the Central Railroad Company of New Jersey, in which mines the Central Railroad Company of New Jersey has an interest by reason of its ownership of stock of the said coal company and otherwise; and

Whereas the Central Railroad Company of New Jersey, as the 809
owner of a majority of the stock of said coal company desires to reduce the rate of interest on the funded debt of said coal company; and

Whereas the Central Railroad Company of New Jersey, by its board of directors, has agreed, subject to the consent of a majority in interest of its stockholders, to guarantee the payment of such of the consolidated bonds of the coal company as may be extended for ten years at the rate of four and one-half per cent interest instead of seven per cent, which is the present rate of interest on said bonds, under the following form of extension contract and guarantee, viz:

* * * * * * *

Now therefore resolved, That the stockholders of the Central Railroad Company of New Jersey hereby consent to the guarantee of the payment of said extended bonds.

Extract from the minutes of a meeting of the directors of the Central Railroad Company of New Jersey, held April 5, 1910.

* * * * * * *

Resolved, That the notice of this special meeting, to be mailed to stockholders, shall be in the following form:

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY,
143 Liberty Street, New York City, April 5th, 1910.

To stockholders: 810

A special meeting of the stockholders of this company is hereby called to convene at noon on Monday, May 2d, 1910, at the office of the company in its terminal building at Jersey City, for the purpose of obtaining their consent to a guarantee by this company of the principal and interest of $20,000,000 consolidated four (4) per cent mortgage bonds, to be issued as of June 1st, 1910, by the Lehigh & Wilkes-Barre Coal Company, for the refunding of—

$12,175,000 4½ per cent bonds, due June 1st, 1910.
4,821,000 5 per cent bonds, due June 1st, 1910.
2,691,000 5 per cent bonds, due Nov. 1st, 1912.

(The remainder, $313,000, to be reserved for improvements.)

The Central Railroad Company of New Jersey is the owner of a majority of the stock of said coal company, and desires the rate of interest on the funded debt of said coal company reduced.

For purpose of this meeting, the stock transfer book will be closed from 3 p. m. on April 11th, 1910, until 10 a. m. on May 3rd, 1910.

If you do not anticipate attending this meeting in person, please sign and return the enclosed proxy, which, unless you otherwise specify, will be used under the direction of the present board, to con-
811 sent to such guarantee.

GEORGE F. BAER, *President.*

[NOTE.—The above notice was subsequently sent as provided for. See p. 159 of the minutes.]

Extract from minutes of the meeting of the directors of the Central Railroad Company of New Jersey, held September 20, 1910.

"By way of explanation as to the 4 per cent bonds of Lehigh & Wilkes-Barre Coal Company, held in treasury, amounting to $6,287,000, the president made the following statement:

The company held 5 per cent bonds due 6-1-1910	$4,821,000
The Lehigh & Wilkes-Barre Coal Company paid off in cash	325,000
For the balance there was received 4 per cent bonds of the L. & W.-B. C. Co.	4,496,000
This exchange was authorized by the board on April 5th, 1910.	
Through purchase, there was acquired L. & W.-B. C. Co. 4½ per cent bonds due June 1st, 1910. $1,750,000, which were exchanged with J. P. Morgan & Co. for new 4 per cent bonds at 97.68 of a par value of	1,791,000
	6,287,000

812 *Extract from the minutes of a meeting of the directors of the Lehigh & Wilkes-Barre Coal Co., held June 9, 1910.*

For information of the board, the president stated that, under authority previously granted, the consolidated mortgage to secure $20,000,000 4 per cent bonds had been executed and filed with the Pennsylvania Company for Insurances on Lives and Granting Annuities, trustee of the mortgage, and that all the bonds ($20,000,000) have been signed by the officers of the company and delivered to said trustee for authentication, and out of the same there have been sold $12,500,000 to J. P. Morgan & Company, i. e., at par value, subject to a commission of 2 per cent, and that out of the remainder, $7,500,000, there will be delivered to the Central Railroad Company of New Jersey $4,496,000, which, with $325,000 in cash, which has been paid, will extinguish the 5 per cent gold bonds of a par value $4,821,000, which matured on June 1st, 1910. This will leave in the hands of the trustee $3,004,000; that is, $2,691,000 reserved to take up the 5 per cent bonds due November 1st, 1912, and $313,000 for future development and equipment of the property.

Extract from the minutes of a meeting of directors of Lehigh & Wilkes-Barre Coal Co., held February 20, 1902.

Resolved, That the principal office of this company from and after the first day of May, 1902, shall be located in the Reading Terminal,
813 Philadelphia; and that the president is authorized to do whatever in his judgment is necessary to do to carry this provision into effect.

Extract from the minutes of a meeting of the directors of the Lehigh & Wilkes-Barre Coal Co., held May 19, 1913.

The president advised that he had purchased for the company the total capital stock of the Parrish Coal Company, paying therefor $675,000 cash, which action was, on motion, ratified, approved, and confirmed.

Counsel for the Government also offered in evidence statement furnished by Mr. Heebner in regard to certain leases, as follows:

Statement of leases now in force made by the Philadelphia and Reading Coal & Iron Company which require the lessees to ship coal mined by them on company's lands over the lines of the Philadelphia & Reading Railway Company. 814

FEBRUARY, 1914.

Lessee.	Date of lease.	Expires.	Premises.	Coal acres leased.
Gorman & Campion	Feb. 1, 1903	At will	Tamaqua estate	6
Do	July 1, 1908	At will	Baber & Guiterman, Schuylkill Township, Schuylkill County.	205
Saint Clair Coal Co	June 1, 1898	May 31, 1917	Valley Furnace, Lee & St. Clair tract, boro. of St. Clair and New Castle Township.	658
Bloomingdale Valley Coal Co.	July 2, 1906	At will	Valley Furnace, Blythe Twp., Schuylkill County.	27
Mt. Hope Coal Co	Feb. 1, 1896	At will	Lee Lands & Saw Mill, St. Clair boro.	63
Richard White	July 1, 1896	At will	Ellmaker & Flowery field tracts, New Castle Twp., Schuylkill County.	64
Oak Hill Coal Co	Aug. 1, 1904	Dec. 21, 1923	Oak Hill & Diamond tracts, Cass Twp., Schuylkill County.	102
Lytle Coal Co	July 24, 1894	Apr. 1, 1914	Part of Manhattan lands in Cass Twp., Schuylkill Co.	134
Do	July 24, 1894	Perpetual	Lytle 1-3 interest and two parcels of the Phoenix Parklands, Cass, Twp., Schuylkill Co.	199
Albright Coal Co	Feb. 28, 1895	Coal exhausted.	Manhattan, Salem & Hughes, Langton, Branch Township, Schuylkill County.	97
Pine Hill Coal Co	Apr. 1, 1899	Mar. 31, 1914	Manhattan lands, Cass Township, Schuylkill County.	205
Buck Run Coal Co	June 1, 1901	Coal exhausted.	Manhattan & Reed, Cass Township, Schuylkill County.	204
John H. Davis	Jan. 1, 1894	At will	Gettle & Wagner, New Castle Twp., Schuylkill County.	77
Whims & Shortall	Feb. 1, 1896	At will	Gettle & Wagner & J. Laing, New Castle Township, Schuylkill County.	46
East Ridge Coal Co	July 18, 1899	Coal exhausted.	Gettle & Wagner, Cass Township, Schuylkill County.	7
Excelsior Coal Co	June 1, 1907	At will	Brady tract, Coal Township, Northumberland County.	233
Dodson Coal Co	Aug. 1, 1893	Dec. 31, 1917	Ely & Rieble tracts, Mahanoy & W. Mahanoy Twp., Schuylkill County.	148
Enterprise Coal Co	Mar. 1, 1902	Feb. 28, 1917	McIntyre lands, Mt. Carmel Twp., Northumberland County.	290
Buck Ridge Coal Co	Dec. 2, 1912	At will	Brady tract, Coal Township, Northumberland County.	9
W. W. Scott	Jan. 1, 1910	At will	Manhattan lands, Cass Twp., Schuylkill County.	16
Schuylkill Lehigh Coal Co.	Apr. 18, 1911	Mar. 31, 1941	Valley Furnace, Schuylkill Twp., Schuylkill County.	17
Total acreage				2,807
Lease to Dodson Coal Co.	Requires shipment of all coal mined from lands leased to it and an equal quantity of coal mined by it from lands of others shipped over lines of the Philadelphia & Reading Railway Company. See copy of covenants of lease relating thereto.			

PHILADELPHIA, *February 26, 1914.*

815 *Statement of leases now in force made by the Fulton Coal Company which requires the lessees to ship coal mined by them over the lines of the Philadelphia and Reading Railway Company.*

Lessee.	Date of lease.	Expires.	Premises.	Coal acres leased.
Excelsior Coal Co.	June 1, 1907	At will.	Fulton Coal Co.	70
Enterprise Coal Co.	Mar. 1, 1902	Feb. 28, 1917	Fulton Coal Co.	45
Total acreage.				1,15

PHILADELPHIA, *February 26th, 1914.*

Statement of leases now in force made by the Philadelphia and Reading Coal and Iron Company which do not require the lessees to ship coal mined by them on company's lands over the lines of the Philadelphia & Reading Railway Co.

FEBRUARY, 1914.

Lessee.	Date of lease.	Expires.	Premises.	Coal acres leased.
Lehigh Valley Coal Co.	Dec. 1, 1901	Coal exhausted.	Mt. Car. Coal & I. Co., Mt. Carmel Boro., Northumberland Co.	50
Lehigh Valley Coal Co.	Jan. 1, 1892	Perpetual.	Manhattan & Swatara lands, Reilly Township, Schuylkill Co.	274
Summit Branch Mining Co.	June 1, 1897		Munson & Williams lands, Porter Township, Schuylkill Co.	6
T. D. Bergen.	Dec. 1, 1913	At will.	Wetherill, Gray & Cleaver tracts, Coal Township, Northumberland Co.	3
Alliance Coal Mining Co.	Nov. 1, 1913	Perpetual.	Wood & Abbott, Blythe Township, Schuylkill Co.	50
Total acreage.				383

PHILADELPHIA, *February 26th, 1914.*

*794 Counsel for the Government also offer in evidence a statement of tonnage of anthracite coal mined by individual operators under lease from lands of the Philadelphia & Reading Coal and Iron Company, etc., as follows:

*795 *Tonnage of anthracite coal mined by individual operators under lease from lands of the Philadelphia & Reading Coal & Iron Company, of the Fulton Coal Company, of the Delaware Coal Company, and from lands leased to the Philadelphia & Reading Coal & Iron Company, during the years ended December 31, 1909, 1910, 1911, 1912, and 1913.*

Name.	1909	1910	1911	1912	1913	Total.
From lands owned by the Philadelphia & Reading Coal & Iron Company.						
John H. Davis	26,699.14	34,267.06	31,904.13	26,922.12	28,159.00	146,953.05
Butcher Creek Coal Co.	21,464.09	11,161.16	19,062.11	14,135.17	12,600.02	78,424.15
Chas. Geisweit	333.14	210.10	207.02	163.10	270.18	1,185.14
Mt. Hope Coal Co.	57,913.01	59,427.08	60,223.02	43,043.12	30,373.12	250,980.15
A. A. Raabe	910.10	717.10	777.00	189.00		2,594.00
Excelsior Coal Co.	91,296.13	70,242.01	71,918.15	77,779.00	103,482.06	414,718.15
Dreshman Bros.	2,155.00	1,692.05	1,552.15	570.15		5,970.15
J. A. Lawrence, "W. W. Scott"	3,263.05	3,176.10	1,764.04	3,020.04	4,297.13	15,521.16
Oak Hill Coal Co.	16,569.10	20,800.04	23,015.04	16,513.02	33,842.03	110,740.03

*So numbered in original.

Tonnage of anthracite coal mined by individual operators under lease from lands of the Philadelphia & Reading Coal & Iron Company, etc.—Continued.

Name.	1909	1910	1911	1912	1913	Total.
From lands owned by the Philadelphia & Reading Coal & Iron Company—Contd.						
Lehigh Valley Coal Co.	32,383.19	162,665.11	181,977.15	123,972.11	90,393.16	593,393.12
J. H. Denning	335.15					335.15
Dodson Coal Co.	112,797.10	122,654.11	108,613.12	48,271.18	90,247.10	482,585.01
Gorman & Campion	9,217.10	8,908.17	16,651.05	13,898.10	21,368.08	70,044.10
Lytle Coal Co.	49,909.09	69,411.14	72,231.06	73,034.14	88,785.00	353,372.03
Richard White	200.01	2,611.08	6,516.02	9,607.13	16,030.09	34,965.13
Beddow & Mc-Cready	987.06	570.00				1,557.06
Wm. Cooke	4,105.17	7,093.12	4,969.18			16,979.07
Pine Hill Coal Co.	102,277.01	116,154.00	101,273.07	97,988.19	108,367.16	526,061.03
Furnace Coal Co.	11,434.02	6,669.02	1,056.15			19,799.19
Phillips Coal Co.	8,231.00	2,959.00	2,349.10	385.00		13,924.10
Lorberry Coal Co.	6,986.05					6,986.05
Buck Run Coal Co.	86,434.00	133,592.11	114,647.16	125,320.05	117,480.03	577,474.15
Big Creek Coal Co.	47,492.11	3,720.10				51,213.01
Cambridge Coal Co.		7,906.15	45,311.11	58,379.06	69,961.04	181,588.06
Enterprise Coal Co.	48,133.18	138,153.06	157,945.00	127,097.00	63,570.00	534,899.04
St. Clair Coal Co.	204,469.17	246,468.12	210,940.06	201,133.15	180,724.08	1,033,735.18
Schuylkill Lehigh Coal Co.			1,712.06	26,279.17	10,422.15	38,414.18
Summitt Branch Mining Co.			222.05	1,608.13		1,831.02
Back Ridge Coal Mining Co.				387.04	13,898.06	14,285.10
Maryd Coal Co.					7,109.15	7,109.15
Total	996,011.17	1,251,134.19	1,239,443.08	1,089,701.03	1,091,384.04	5,047,677.11
From lands owned by Fulton Coal Company.						
Excelsior Coal Co.	143,524.00	167,402.19	178,700.05	151,447.10	98,494.10	741,629.10
Enterprise Coal Co.	33,961.10	37,120.05	47,979.07	55,869.06	73,732.06	248,602.14
Total	167,485.10	204,523.04	226,679.12	209,317.02	172,227.05	980,232.11
From lands owned by Delaware Coal Company.						
Small operators	842.00	864.10	581.00	932.00	768.00	3,987.10
From lands leased to the Philadelphia & Reading Coal & Iron Company.						
Cambridge Coal Co.	27,028.14	13,308.06	6,811.18	5,744.14	2,775.17	55,669.09
Furnace Coal Co.	26,456.10	29,809.14	18,369.08			74,635.12
Brookwood Coal Co	993.02	237.12				1,230.14
Harleigh Brookwood Coal Co.			274.16	1,745.09	7,209.15	9,230.00
Mt. Hope Coal Co.	19,304.07	19,809.13	20,077.14	14,348.13	10,124.10	83,664.17
J. H. Denning	795.03					795.03
Richard White	473.17	6,184.16	15,432.15	25,035.15	27,604.15	72,731.18
St. Clair Coal Co.	70,161.12	72,717.07	70,333.09	67,044.18	60,240.19	340,478.05
Total	145,213.05	142,067.08	131,280.00	111,919.09	107,955.16	638,435.18
Grand total	1,309,552.12	1,578,590.01	1,597,984.00	1,411,871.14	1,372,335.05	7,270,333.12

PHILADELPHIA, *February 20, 1914.*

816 Counsel for the Government also offered a typical form of lease by the Philadelphia & Reading Coal & Iron Company, furnished from the same source, counsel for the Government (Mr. Kingsbury) stating that he desires to read therefrom the third covenant only, as follows:

Third. To ship in each year during the term hereby created all the coal mined and shipped from the demised premises in the cars of the Philadelphia & Reading Railroad Company, or in cars that reach their destination exclusively by the railroads owned, leased, or controlled by the said Philadelphia & Reading Railroad Company.

Counsel for the Government also offered certain extracts from the lease dated August 1 1893, from the Philadelphia & Reading Coal & Iron Company to Dodson Coal Company relating to shipments over lines of Philadelphia & Reading Railroad Company.

Seventh. To ship over the railroads leased, owned, or controlled by the Philadelphia and Reading Railroad Company, or over such railroad or railroads as may be designated by the party of the first part hereto all coal mined and shipped from the premises hereby demised; and also to mine and ship over the same railroads from
817 the adjoining tracts upon which the said Lessees are now operating in each year, an amount of coal equal in quantity and sizes to the amount in such year mined and shipped from the premises hereby demised, which amount from said adjoining tract shall not be less, in any one year, than forty thousand tons excluding sizes below buckwheat.

And if, during any one year as aforesaid, said Lessees shall neglect, refuse, or fail to ship over the said railroads, from the said adjoining tracts an amount of coal equal as aforesaid to the amount mined and shipped as aforesaid in such year from the premises hereby demised, then, and in every such case, the Lessees hereby agree that they will, on the twentieth day of August next succeeding the expiration of said year, pay in cash as an additional rental for the premises hereby demised a sum of money equal to fifty cents a ton upon the number of tons of the deficiency in either case.

And if in either of the two years next succeeding the year in which such deficiency shall have occurred, the party of the second part shall have shipped from the said adjoining lands a quantity in excess of the shipment during that year from the demised premises, and in such year shall have kept its covenants herein contained in respect of the minimum annual shipment of forty thousand tons of coal from said adjoining premises, then the said party of the second part shall
818 be entitled to a return of or credit for an amount of money equal to fifty cents per ton on the tonnage shipped in that year from the said adjoining premises in excess of the amount required by this contract to be shipped therefrom in that year. But if the quantity shipped from the adjoining premises shall, for any year during the term hereby created, be in excess of the amount shipped during the same year from the demised premises, and if no deficiency shall have occurred previously, and if the provisions in regard to the minimum annual shipment of forty thousand tons shall have been observed, then the party of the second part shall have a credit for this excess shipment which shall be applicable, so far as it may go, to cancel the obligation

to pay the stipulated additional rental on account of any deficiency that may thereafter occur. But no liability on the part of the party of the first part to pay any money to the party of the second part shall accrue in case, at the end of the term hereby created, the total tonnage shipped from the said adjoining lands over the roads to be designated as aforesaid by the party of the first part, shall be greater than the total tonnage so shipped from the demised premises.

It being expressly understood, however, that in case the said Lessee shall in any year be prevented or restricted from shipping any part of the above-specified minimum of forty thousand tons by reason of the exhaustion of either of the tracts of land hereby demised or adjoining the same and operated by them, by the inadequate supply 819
of cars furnished by the railroad company designated by the party of the first part to furnish the same, by prolonged strike of the workmen, by fire or flood in the mines, by destruction of the breaker, or by any other unavoidable causes beyond the control of the said Lessee, the said Lessee shall be relieved from the obligation to pay such proportionate part of the said additional rental as the amount they have been prevented or restricted from shipping by the above-named causes shall bear to the total amount of the deficiency.

Mr. KINGSBURY. I also read in evidence certain extracts from the annual report for 1912 of the Lehigh Coal & Navigation Company, as follows:

(Page 13:) "Reference was made in the last annual report to the extension of the Lehigh & New England Railroad from Danielsville, Pa., to Tamaqua, Pa. (at which point connection is made with the Panther Creek Railroad of your company). This extension, some 32 miles in length, was completed and put in operation on July 8, 1912. The new line, in addition to proving a source of increased revenue to the Lehigh & New England Railroad Company, affords a direct all-rail route to the eastern markets as well as a physical connection with the main trunk lines.

"The financial requirements of the Lehigh & New England Railroad Company and the Lehigh Navigation Electric Company in carrying on the work as above outlined have been provided for by the 820
purchase of their securities and by advances by this company amounting during the year to $1,754,765.67.

"It will be noted that there is an increase of $163,196.49 in miscellaneous revenue, which is mainly accounted for by the proceeds of the sale of the collateral trust power bonds being placed at advantageous rates of interest pending the need of the money for construction purposes. Another large item making up this increase was the initial dividend of 4 per cent received on 5,079 shares of capital stock of the Lehigh & Hudson River Railway Company held by your company."

Counsel for the Government also read in evidence, from the answer of the Central Railroad of New Jersey in the Interstate Commerce Commission docket No. 4914, the list of the fifty largest stockholders, as follows:

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY.

(Docket No. 4914.)

Answer to question No. 1.

Information in form next following concerning fifty (50) largest holders in the aggregate of voting securities at date of last closing of stock books (i. e., prior to June 30th, 1912). (Note.—The respondent has no preferred stock and only the common stock has voting rights.)

821

Names and addresses.	Votes.	Par value of common stock held.
The Pennsylvania Company for Insurances on Lives and Granting Annuities, as trustee under Jersey Central collateral trust deed of Reading Company, dated April 1, 1901, care of Reading Co., Philadelphia, Pa.	145,000	$14,500,000
Fahnestock & Co., 2 Wall St., New York City	11,920	1,192,000
Baker, Geo. F., 2 Wall St., New York City	8,000	800,000
Winslow, Lanier & Co., 59 Cedar St., New York City	6,400	640,000
Graves, Jr., Henry, 111 Broadway, New York City	5,225	522,500
Garland, est. of Jas. A.	4,800	480,000
Graves, est. of Henry, 111 Broadway, New York City	4,400	440,000
Pulitzer, Joseph, c/o/e of American Exchange Natl. Bank, 128 Broadway, New York City	4,000	400,000
Widener, P. A. B., Land Title Bldg., Philadelphia, Pa.	3,200	320,000
Fidelity-Phenix Fire Insurance Co., P. O. box No. 1010, New York City	2,900	290,000
822 Maxwell, est. of Henry W., 30 Broad St., New York City	2,825	282,500
Jones, Benj. W., 77 Beekman St., New York City	2,740	274,000
Fahnestock, H. C., 2 Wall St., New York City	2,400	240,000
Bourne, Frederick G., 149 Broadway, New York City	2,300	230,000
Hopkins, Ferdinand T., 37 Gt. Jones St., New York City	2,075	207,500
Globe-Rutgers Fire Insurance Co., 76 William St., New York City	1,600	160,000
Whitney & Sons, H. N., 17 Broad St., New York City	1,575	157,500
Emery, Chas. G., 320 Fifth Ave., New York City	1,500	150,000
Niagara Fire Insurance Co., 46 Cedar St., New York City	1,500	150,000
Pratt & Co., Charles, 26 Broadway, New York City	1,500	150,000
Shepherd, G., Sidney, New Haven, Conn.	1,500	150,000
Maxwell, est. of J. R., 30 Broad St., New York City	1,289	128,900
823 Dunham, est. of Geo. H., 19 West 81st St., New York City	1,200	120,000
Sanford, Stephen, Amsterdam, N. Y.	1,200	120,000
Vail, est. of Stephen, Morristown, N. J.	1,083	108,300
Graves, Edward H., 111 Broadway, New York City	1,047	104,700
Converse, E. C., P. O. box No. 731, New York City	1,000	100,000
Continental Insurance Company, P. O. box No. 2038, New York City	1,000	100,000
Graves, George Coe, 111 Broadway, New York City	1,000	100,000
Lipman, Chas. K., 165 Broadway, New York City	1,000	100,000
Thomas, E. E., 23 Wall St., New York City	1,000	100,000
Tinker, Henry G., 139 Broadway, New York City	1,000	100,000
White, W. A. & A. M., 5 Nassau St., New York City	1,000	100,000
824 Baer, Geo. F., Reading Terminal, Philadelphia, Pa.	830	83,000
Allen, T. F., 165 Broadway, New York City	800	80,000
Bohn, Frederick, Co., 45 Wall St., New York City	800	80,000
Watson, James S., 11 Prince St., Rochester, N. Y.	660	66,000
Dodd, est. of John M., 29 Broadway, New York City	612	61,200
Maxwell, jr., J. R., 1421 Chestnut St., Philadelphia, Pa.	600	60,000
Bowdoin, Geo. S., 23 Wall St., New York City	500	50,000
Goetchius, est. of John M., 52 W. 58th St., New York City	500	50,000
Hawley, Sarah H., P. O. box No. 112, Newtown, Conn.	500	50,000
Hencken, Hancke, 8 West 121st St., New York City	500	50,000
Home Insurance Company, 56 Cedar St., New York City	500	50,000
825 Terry, John T., 100 Broadway, New York City	500	50,000
Benedict, Drysdale & Co., 7 Wall St., New York City	490	49,000
Hollister, Elizabeth C. W., 75 East Ave., Rochester, N. Y.	480	48,000
de Forest, Robert W., 30 Broad St., New York City	470	47,000
Farren, Bernard N., 1807 Spring Garden St., Phila., Pa.	400	40,000
Garland, Charles T., care of Kidder, Peabody & Co., 56 Wall St., New York City	400	40,000

Counsel for the Government also offered in evidence the following statement, furnished by Mr. Drinker:

THE LEHIGH COAL & NAVIGATION CO.

Shipments from Nesquehoning colliery, years 1911, 1912, 1913.

	To storage plant, Hauto.	To Coal-port for canal.	Via rail.	Total.
1911	19,961.11	85,334.11	675,602.09	780,898.11
1912		91,342.09	531,313.06	622,655.15
1913	10,484.00	98,796.03	643,690.09	752,971.11
Total	30,446.10	275,473.03	1,850,606.04	2,156,525.17

(Adjourned until Monday, March 9, 1914, at 11 a. m.)

Met pursuant to adjournment at No. 2 Rector Street, New York City, Monday, March 9, 1914, at 11 o'clock a. m. 826

Present: The Examiner; Messrs. Coudert, Kingsbury, and Gordon, special assistants to the Attorney General, for the Government; Jackson E. Reynolds, Esq., for the defendants.

Mr. Kingsbury states that he has sent the map, being the first exhibit introduced by the Government, back to the draftsman for correction and has not yet received it, and reserves the right to put it in when received.

Mr. Kingsbury read in evidence, subject to correction, a tabulated statement of the directors and officers of the Reading Companies since the reorganization, prepared from the printed annual reports of the companies, as follows:

827

READING COMPANY.

June 30, 1898 (first annual report, from December 1, 1896, to June 30, 1898).

Officers.—President, Jos. S. Harris; secretary, W. G. Brown; treasurer, W. A. Church.

Directors.—Jos. S. Harris, A. J. Antelo, Charles H. Coster, Geo. F. Baer, George C. Thomas, Henry A. Dupont, Henry P. McKean, Samuel Dickson, John Lowber Welsh.

PHILADELPHIA & READING RAILWAY CO.

June 30, 1898 (first annual report, from December 1, 1896, to June 30, 1898).

Officers.—President, Jos. S. Harris; secretary, W. R. Taylor; treasurer, W. A. Church.

Directors.—Geo. F. Baer, Charles H. Coster, John Lowber Welsh, Geo. C. Thomas, Henry A. Dupont, Henry P. McKean.

828 PHILADELPHIA & READING COAL & IRON CO.

June 30, 1898 (first annual report, from December 1, 1896, to June 30, 1898).

Officers.—President, Jos. S. Harris; secretary, W. G. Brown; treasurer, W. A. Church.
Directors.—John Lowber Welsh, Charles H. Coster, George F. Baer, Thomas McKean, jr., George C. Thomas, A. J. Antelo.

READING COMPANY.

(All these data are obtained from Reading Co.'s annual reports, as each year's report includes all three companies.)

June 30, 1899 (second annual report).

Officers.—President, Jos. S. Harris; secretary, W. G. Brown; treasurer, W. A. Church. (Same as 1898.)
Directors.—Jos. S. Harris, A. J. Antelo, Charles H. Coster, George F. Baer, George C. Thomas, Henry A. Dupont, Henry B. McKean, Samuel Dickson, John Lowber Welsh. (Same as 1898.)

829 PHILADELPHIA & READING RAILWAY CO.

June 30, 1899 (second annual report).

Officers.—President, Jos. S. Harris; secretary, W. R. Taylor; treasurer, W. A. Church. (Same as 1898.)
Directors.—Geo. F. Baer, Charles H. Coster, John Lowber Welsh, George C. Thomas, Henry A. Dupont, Henry P. McKean. (Same as 1898.)

PHILADELPHIA & READING COAL & IRON CO.

June 30, 1899 (second annual report).

Officers.—President, Jos. S. Harris; secretary, W. G. Brown; treasurer, W. A. Church. (Same as 1898.)
Directors.—John Lowber Welsh, Charles H. Coster, George F. Baer, Thomas McKean, jr., George C. Thomas, A. J. Antelo. (Same as 1898.)

830 READING COMPANY.

June 30, 1900 (third annual report).

Officers.—Same as 1899.
Directors.—Same, except Charles Steele took Coster's place.

PHILADELPHIA & READING RAILWAY CO.

June 30, 1900 (third annual report).

Officers.—Same as 1899.
Directors.—Same, except Charles Steele took Coster's place.

PHILADELPHIA & READING COAL & IRON CO.

June 30, 1900 (third annual report).

Officers.—Same as 1899.
Directors.—Same, except Charles Steele took Coster's place.

READING COMPANY. 831

June 30, 1901 (fourth annual report).

Officers.—President, Geo. F. Baer (director); vice president, W. R. Taylor (secretary of railway company); secretary, A. H. Moore; treasurer, W. A. Church (same).
Directors.—Same as 1900, including Harris, ex-president.

PHILADELPHIA & READING RAILWAY CO.

June 30, 1901 (fourth annual report).

Officers.—President, Geo. F. Baer (new); secretary, W. R. Taylor (same); treasurer, W. A. Church (same).
Directors.—Same, except Harris took Baer's place, and vice versa.

PHILADELPHIA & READING COAL & IRON CO.

June 30, 1901 (fourth annual report).

Officers.—President, G. F. Baer (new); secretary, W. G. Brown (same); treasurer, W. A. Church (same).
Directors.—Same, except Harris took Baer's place, and vice versa.

READING COMPANY. 832

June 30, 1902 (fifth annual report).

Officers.—President, G. F. Baer (same); vice president, W. R. Taylor (same); secretary, W. R. Taylor (new); treasurer, W. A. Church (same).
Directors.—Same as 1901.

PHILADELPHIA & READING RAILWAY CO.

June 30, 1902 (fifth annual report).

Officers.—Same as 1901.
Directors.—Same as 1901.

PHILADELPHIA & READING COAL & IRON CO.

June 30, 1902 (fifth annual report).

Officers.—Same as 1901.
Directors.—Same as 1901.

READING COMPANY.

June 30, 1903 (sixth annual report).

Officers.—Same as 1902.
Directors.—Same as 1902, except H. McK. Twombly took Antelo's place.

833 PHILADELPHIA & READING RAILWAY CO.

June 30, 1903 (sixth annual report).

Officers.—Same as 1902, except new first vice president, Theodore Voorhees, and new second vice president, C. E. Henderson.
Directors.—Same as 1902.

PHILADELPHIA & READING COAL & IRON CO.

June 30, 1903 (sixth annual report).

Officers.—Same as 1902, except new first vice president, C. E. Henderson, and new second vice president, R. C. Luther.
Directors.—Same as 1902, except H. McK. Twombly took Antelo's place.

READING COMPANY.

June 30, 1904 (seventh annual report).

Officers.—Same as 1903, except treasurer, Richard Tull, vice W. A. Church.
Directors.—Same as 1903, except Edward T. Stotesbury, vice George C. Thomas.

834 PHILADELPHIA & READING RAILWAY CO.

June 30, 1904 (seventh annual report).

Officers.—Same as 1903, except treasurer, Tull vice Church.
Directors.—Same as 1903, except Edward T. Stotesbury vice Geo. C. Thomas.

PHILADELPHIA & READING COAL & IRON CO.

June 30, 1904 (seventh annual report).

Officers.—Same as 1903, except treasurer, Tull vice Church.
Directors.—Same as 1903, except Edward T. Stotesbury vice G. C. Thomas.
(Note.—Notice same changes in all three companies.)

READING COMPANY.

June 30, 1905 (eighth annual report).

Officers.—Same as 1904.
Directors.—Same as 1904, except Henry C. Frick vice J. L. Welsh, deceased.

835 PHILADELPHIA & READING RAILWAY CO.

June 30, 1905 (eighth annual report).

Officers.—Same as 1904.
Directors.—Same as 1904, except H. McK. Twombly vice Henry P. McKean, and Henry C. Frick vice J. L. Welsh, deceased.

PHILADELPHIA & READING COAL AND IRON CO.

June 30, 1905 (eighth annual report).

Officers.—Same as 1904, except Second Vice President Thomas M. Richards vice R. C. Luther.
Directors.—Same as 1904, except Henry C. Frick vice J. L. Welsh, deceased.

READING COMPANY.

June 30, 1906 (ninth annual report).

Officers.—Same as 1905.
Directors.—Same as 1905.

PHILADELPHIA & READING RAILWAY CO.

June 30, 1906 (ninth annual report).

Officers.—Same as 1905.
Directors.—Same as 1905.

836

PHILADELPHIA & READING COAL AND IRON CO.

June 30, 1906 (ninth annual report).

Officers.—Same as 1905, except First Vice President Thomas M. Richards vice C. E. Henderson and Second Vice President W. J. Richards (and general manager) vice Thomas M. Richards.
Directors.—Same as 1905.

READING COMPANY.

June 30, 1907 (tenth annual report).

Officers.—Same as 1905–6.
Directors.—Same as 1905–6.

PHILADELPHIA & READING RAILWAY CO.

June 30, 1907 (tenth annual report).

Officers.—Same as 1905–6.
Directors.—Same as 1905–6.

837

PHILADELPHIA & READING COAL AND IRON CO.

June 30, 1907 (tenth annual report).

Officers.—Same as 1906.
Directors.—Same as 1905–6.

READING COMPANY.

June 30, 1908 (eleventh annual report).

Officers.—Same as 1905–6, except Treasurer Harry E. Paisley vice Richard Tull.

Directors.—Same as 1905–6, except Oscar G. Murray vice Charles Steele.

PHILADELPHIA & READING RAILWAY CO.

June 30, 1908 (eleventh annual report).

Officers.—Same as 1905–7, except Second Vice President Henderson's position omitted and Treasurer Harry E. Paisley vice Richard Tull.

Directors.—Same as 1905–7, except Oscar G. Murray vice Charles Steele.

838 PHILADELPHIA & READING COAL AND IRON CO.

June 30, 1908 (eleventh annual report).

Officers.—Same as 1907, except Treasurer Harry E. Paisley, vice Richard Tull.

Directors.—Same as 1905–7, except Oscar G. Murray, vice Charles Steele.

(Note identical changes.)

READING COMPANY.

June 30, 1909 (twelfth annual report).

Officers.—Same as 1908.

Directors.—Same as 1908.

PHILADELPHIA & READING RAILWAY CO.

June 30, 1909 (twelfth annual report).

Officers.—Same as 1908.

Directors.—Same as 1908.

839 PHILADELPHIA & READING COAL AND IRON CO.

June 30, 1909 (twelfth annual report).

Officers.—Same as 1908, except First Vice President Thomas M. Richards died, and W. J. Richards, second vice president, made sole vice president.

Directors.—Same as 1908.

READING COMPANY.

June 30, 1910 (thirteenth annual report).

Officers.—Same as 1908–9.

Directors.—Same as 1908–9, except George F. Baker and Peter A. B. Widener vice Jos. S. Harris and H. McK. Twombly.

PHILADELPHIA & READING RAILWAY CO. 840

June 30, 1910 (thirteenth annual report).

Officers.—Same as 1908–9.
Directors.—Same as 1908–9, except Geo. F. Baker and Peter A. B. Widener vice Harris and Twombly.

PHILADELPHIA & READING COAL AND IRON CO.

June 30, 1910 (thirteenth annual report).

Officers.—Same as 1909, except First Vice President W. J. Richards also entitled general manager.
Directors.—Same as 1908–9, except Geo. F. Baker and Peter A. B. Widener vice Jos. S. Harris and H. McK. Twombly.
(Note identical changes in all three companies' directors.)

READING COMPANY. 841

June 30, 1911 (fourteenth annual report).

Officers.—Same as 1908–10.
Directors.—Same as 1910.

PHILADELPHIA & READING RAILWAY CO.

June 30, 1911 (fourteenth annual report).

Officers.—Same as 1908–10.
Directors.—Same as 1910.

PHILADELPHIA & READING COAL AND IRON CO.

June 30, 1911 (fourteenth annual report).

Officers.—Same as 1910.
Directors.—Same as 1910.

READING COMPANY.

June 30, 1912 (fifteenth annual report).

Officers.—Same as 1908–11.
Directors.—Same as 1910–11, except Daniel Willard vice Oscar G. Murray.

PHILADELPHIA & READING RAILWAY CO.

June 30, 1912 (fifteenth annual report).

Officers.—Same as 1908–11.
Directors.—Same as 1910–11, except Daniel Willard vice Oscar G. Murray.

PHILADELPHIA & READING COAL AND IRON CO.

June 30, 1912 (fifteenth annual report).

Officers.—Same as 1910–11.
Directors.—Same as 1910–11, except Daniel Willard vice Oscar G. Murray.
(Note identical changes again.)

842 Mr. Kingsbury also read in evidence a tabulated statement of the officers and directors of the Central Railroad Company of New Jersey, from 1887 to date, prepared from the printed annual reports of the company, as follows:

CENTRAL RAILROAD COMPANY OF NEW JERSEY.

December 31, 1887.

John S. Kennedy, Joseph S. Harris, receivers.

December 31, 1888.

President, J. Rogers Maxwell; vice president, Jos. S. Harris; secretary, Samuel Knox; treasurer, J. W. Watson.
Directors.—Austin Corbin, H. C. Fahnestock, Jas. A. Garland, Edward D. Adams, Charles Lanier, J. Rogers Maxwell (president), George F. Baker, Henry Graves, Henry W. Maxwell.

December 31, 1889.

Same officers and directors.

December 31, 1890.

Same officers and directors.

December 31, 1891.

Same officers and directors.

December 31, 1892.

843 Same officers and directors, except Samuel Sloan, director, in place of Austin Corbin.

December 31, 1893.

Same as 1892.

December 31, 1894.

Same as 1892.

December 31, 1895.

Same as 1892.

December 31, 1896.

Same as 1892, except Frederick G. Bourne elected director in place of Edward D. Adams.

December 31, 1897.

President, J. R. Maxwell; first vice president, G. F. Baker; second vice president, S. M. Williams; treasurer, J. W. Watson; secretary, Samuel Knox.

Directors.—Same as 1896.

December 31, 1898.

Same officers and directors as 1897.

December 31, 1899.

Officers.—President, J. R. Maxwell; chairman executive committee, G. F. Baker; first vice president, C. H. Warren (former assistant to president); second vice president and comptroller, S. M. Williams; treasurer, J. W. Watson; secretary, Samuel Knox. 844

Same directors.

December 31, 1900.

Not stated.

December 31, 1901.

Officers.—President, Geo. F. Baer; chairman executive committee, J. R. Maxwell; vice president, Chas. H. Warren: secretary and treasurer, G. O. Waterman.

Directors.—G. F. Baer, J. R. Maxwell, G. F. Baker, H. C. Fahnestock, Eben B. Thomas, J. Lowber Welsh, Henry Graves, Jos. S. Harris, Chas. Steele.

CENTRAL RAILROAD COMPANY OF NEW JERSEY. 845

For fiscal year ending June 30, 1903.

(Change of fiscal year covers 18 months. Reports hereafter for fiscal year ending June 30.)

Same directors.

Same officers, except Vice President Warren out and Vice President and General Counsel Robert W. De Forest and Vice President and General Manager W. G. Besler elected.

June 30, 1904.

Same directors.

Same officers as June 30, 1903.

June 30, 1905.

Same directors, except H. McK. Twombly took place of J. L. Welsh, deceased.

Same officers.

June 30, 1906.

Same officers as 1905.

Same directors as 1905.

June 30, 1907.

Same officers.

Same directors, except Robert W. De Forest took Henry Grave's place.

June 30, 1908.

Same directors as 1907.
846 Same officers as 1907.

June 30, 1909.

Same officers.
Directors not stated.

June 30, 1910.

Same officers.
Same directors, except Hy. Graves, jr., took Twombly's (deceased) place, and E. T. Stotesbury took Harris's (deceased) place.

June 30, 1911.

Same officers, except G. F. Baker took J. R. Maxwell's (deceased) place as chairman executive committee.
Same directors, except Howard W. Maxwell took J. R. Maxwell's (deceased) place.

June 30, 1912.

Same officers and directors as 1911. No change.

Mr. Kingsbury also read in evidence the following tabulated statement of the officers and directors of the Lehigh and Wilkes-Barre Coal Co., prepared from its annual reports from 1901 to date, except the years 1903–1908:

LEHIGH & WILKES-BARRE COAL CO.

(Reports for 1901–1903 included with Central R. R. of New Jersey.)

December 31, 1901.

847 *Directors.*—G. F. Baer, J. R. Maxwell, G. F. Baker, Jos. S. Harris, Samuel Dickson, Andrew H. McClintock, Calvin Pardee.
Officers.—President, G. F. Baer; vice president, C. H. Warren; secretary and treasurer, G. O. Waterman.
(Note.—Identical with Central R. R. of New Jersey for 1901.)

June 30, 1903.

Same directors, except J. L. Welsh, elected in place of Pardee.
Same officers, except vice president's office abolished.

June 30, 1908.

Same directors, except H. McK. Twombly took Welsh's place in both railroad and this company in 1905.
Same officers, viz: President, G. F. Baer; secretary and treasurer, G. O. Waterman.

June 30, 1909.

848 Same directors.
Same officers, and new office of vice president and general manager created and filled by C. F. Huber.

June 30, 1910.

Same directors, except E. T. Stotesbury succeeded Jos. S. Harris, deceased, and Charlemagne Tower, jr., succeeded H. McK. Twombly, deceased. (Same as in Central R. R. of N. J.)
Same officers as 1909, except Percival B. Heilner made additional vice president and general manager.

June 30, 1911.

Same directors, except J. R. Maxwell died; no successor named.
Same officers as 1910.

June 30, 1912.

Same directors, except Thomas A. Wright added.
Same officers.

At the request of Mr. Kingsbury, Mr. Reynolds later furnished to the examiner the following statement covering the years 1903–1908, inclusive:

As to the directors, the following served continuously in the above period: George F. Baer, George F. Baker, Joseph S. Harris, Samuel 848½
Dickson, Andrew McClintock.
There was one change, as follows:
J. Lowber Welsh was a director on June 30, 1903; died August 22, 1904.
H. McK. Twombly was elected director at annual meeting of stockholders on September 22, 1904, and continued as such for remainder of period.
There was practically no change in the officers, except that Mr. C. F. Huber became general superintendent in 1903 and was promoted to the vice president and general manager's position after June 30, 1908. During this interval also Mr. P. B. Heilner was promoted from general sales agent to the position of vice president and general agent.

Mr. Kingsbury also read in evidence the following statement of the directors and officers of the Lehigh Coal and Navigation Co. from 1871 to date, prepared from its printed annual reports:

LEHIGH COAL & NAVIGATION CO. 849

Report of May, 1871.

President, E. W. Clark.
Managers.—Francis R. Cope, Francis C. Yarnall, Fisher Hazard, Charles Parrish, George F. Tyler, Philip C. Garrett, Charles Wheeler, George Whitney, Alexander Biddle, John Leisenring, Samuel Thomas.
Pres. asst. and comptroller, Mendes Cohen; treasurer, Solomon Shepherd; secretary, F. Mitchell.

May, 1872.

Same managers.
Same officers, except pres. asst., etc., was discontinued.

May, 1873.

Same as 1872.

February, 1874.

Same as 1872.

February, 1875.

850 *Officers.*—President, E. W. Clark; secretary and treasurer, Solomon Shepherd.

Same managers, except James M. Willcox took Tyler's place.

February, 1876.

Same officers as 1875.

Same managers as 1875, except T. Charlton Henry took Garrett's place and Edward Lewis took Thomas's place.

February, 1877.

Same officers as 1876.

Same managers as 1876.

February, 1878.

Same officers as 1877.

Same managers as 1877, except John Brown took Alex. Biddle's place.

February, 1879.

Same officers continued.

Samuel Dickson took John Brown's place.

(1880–1887 missing.)

February, 1888.

851 *Officers.*—President, Jos. S. Harris; vice president, F. C. Yarnall (old manager); secretary and treasurer, S. Shepherd.

Managers.—E. W. Clark (ex-president), F. R. Cope, F. Hazard, C. Parrish, J. M. Willcox, E. Lewis, T. C. Henry, S. Dickson, E. B. Leisenring, Abram S. Hewitt.

February, 1889.

Same officers as 1888.

Same managers, except Thomas McKean took F. Hazard's place.

February, 1890.

Same officers as 1888.

Same managers as 1888.

February, 1891.

Same officers, except vice president's position discontinued (as 1890).

Same managers, except T. C. Henry off board and Edward S. Buckley and Charlemagne Tower, jr., added.

February, 1892.

Same officers and managers as 1891.

February, 1893.

Same officers and managers as 1891.

February, 1894. 852

President, Edward B. Leisenring; secretary and treasurer, S. Shepherd.
Same managers, except Jos. S. Harris, who was until then president, exchanged places with E. B. Leisenring and became a manager.

February, 1895.

President, C. Pardee; secretary and treasurer, S. Shepherd.
Managers same as 1894. (Leisenring out.)

February, 1896.

Same officers as 1897.
Same managers, except J. Bayard Henry took J. M. Willcox's place.

February, 1897.

President, Lewis A. Riley; secretary and treasurer, S. Shepherd.
Same managers, except Charles Parrish and Edward S. Buckley out and their places taken by C. Pardee (ex-president) and John S. Wentz.

February, 1898.

President, L. A. Riley; vice president and auditor (new), C. F. Howell; secretary and treasurer, S. Shepherd.
Managers same as 1897, except James May Duane took C. Tower, 853
jr.'s place.

February, 1899.

Same officers as 1898.
Same managers, except that Henry Pratt McKean took Thomas McKean's place.

February, 1900.

Same officers as 1899.
Same managers as 1899.

February, 1901.

Same officers as 1899.
Same managers as 1899.

February, 1902.

Same officers, except H. F. Baker made secretary and treasurer in place of S. Shepherd (there since 1875).
Same managers, except R. Dale Benson took Edward Lewis's place.

February, 1903.

Same officers as 1902.
Same managers, except Erskine Hewitt took A. S. Hewitt's place.

February, 1904.

Same officers as 1903.
Same managers as 1903.

854 *February, 1905.*

Same officers, except vice president and auditor's position discontinued or vacant.

Same managers, except Edward W. Clark and Calvin Pardee off board and Edward Walter Clark and Richard Y. Cook took their places.

February, 1906.

Officers.—President, Lewis A. Riley (same); vice president, George B. Harris (new); secretary and treasurer, H. F. Baker (same).

Managers, same as 1905.

February, 1907.

Officers.—President, W. A. Lathrop (new); vice president, G. B. Harris (same); secretary and treasurer, H. F. Baker (same).

Managers same, except Lewis A. Riley (last president) took Francis R. Cope's place on board.

February, 1908.

Officers.—President, W. A. Lathrop (same); vice president, Rollin H. Wilbur (took G. B. Harris's place); secretary and treasurer, H. F. Baker (same).

855 Managers same as 1907, as follows: Jos. S. Harris, Lewis A. Riley, Samuel Dickson, Bayard Henry, John S. Wentz, James May Duane, Henry Pratt McKean, R. Dale Benson, Erskine Hewitt, Edward Walter Clark, Richard Y. Cook.

February, 1909.

Officers, same as 1908.

Managers, same as 1908.

February, 1910.

Officers, same as 1908.

Managers, same as 1908, except W. A. Lathrop (then president) added.

February, 1911.

Same officers as 1908.

Same managers as 1908, except C. S. W. Packard took Jos. S. Harris's place (vice).

February, 1912.

Same officers as 1908, except second vice president Edwin Ludlow added.

Same managers as 1911.

February, 1913.

856 *Officers.*—President, S. D. Warriner (new); vice president, Rollin H. Wilbur (same); vice president, Edwin Ludlow (same); vice president and secretary, H. F. Baker (same); assistant secretary, R. V. Pierce (new); treasurer, (none); assistant treasurer, O. E. Neff (new); comptroller, E. M. Reynolds; assistant comptroller, J. C. Campbell.

Managers same, except S. D. Warriner (president) and Geo. H. Frazier, vice Jas. May Duane and W. A. Lathrop (out).

Mr. Kingsbury also read in evidence the following statement of the directors and officers of the Lehigh and New England Railroad Co., from 1903 to 1913, inclusive, furnished by Mr. Wm. Jay Turner:

DIRECTORS AND OFFICERS LEHIGH AND NEW ENGLAND RAILROAD COMPANY, 1903 TO 1913, INCLUSIVE.

Directors.—*1903:* Wm. B. Scott, W. W. Gibbs, W. W. Kurtz, Morris Pfaelzer, J. W. Moffly, G. W. Jackson. *1904:* Wm. Jay Turner, J. R. Whitney, L. A. Riley, S. Dickson, J. S. Harris, E. J. Fox. *1905:* E. W. Clark, J. R. Whitney, L. A. Riley, S. Dickson, J. S. Harris, E. J. Fox. *1906:* E. W. Clark, J. R. Whitney, L. A. 857
Riley, S. Dickson, J. S. Harris, E. S. Fox. *1907:* E. W. Clark, W. A. Lathrop, L. A. Riley, S. Dickson, J. S. Harris, E. S. Fox. *1908:* E. W. Clark, L. A. Riley, S. Dickson, J. S. Harris, E. J. Fox, W. J. Turner, J. M. Duane, R. Y. Cook, J. S. Wentz. *1909:* E. W. Clark, L. A. Riley, S. Dickson, J. S. Harris, E. J. Fox, W. J. Turner, J. M. Duane, R. Y. Cook, J. S. Wentz. *1910:* E. W. Clark, L. A. Riley, S. Dickson, J. S. Harris, E. J. Fox, W. J. Turner, J. M. Duane, R. Y. Cook, J. S. Wentz. *1911:* E. W. Clark, L. A. Riley, S. Dickson, E. J. Fox, Bayard Henry, W. J. Turner, J. M. Duane, R. Y. Cook, J. S. Wentz. *1912:* W. J. Turner, L. A. Riley, S. Dickson, B. Henry, E. W. Clark, E. J. Fox, J. M. Duane, R. Y. Cook, J. S. Wentz. *1913:* L. A. 858
Riley, S. Dickson, B. Henry, E. W. Clark, E. J. Fox, J. S. Wentz, R. Y. Cook, G. H. Frazier, W. J. Turner.

Executive committee.—*1903:* (None.) *1904:* L. A. Riley, S. Dickson, J. S. Harris, W. J. Turner. *1905:* L. A. Riley, S. Dickson, J. S. Harris, W. J. Turner, Edw. W. Clark. *1906:* L. A. Riley, S. Dickson, J. S. Harris, W. J. Turner, E. W. Clark. *1907:* L. A. Riley, W. A. Lathrop, J. S. Harris, W. J. Turner, E. W. Clark. *1908:* L. A. Riley, W. A. Lathrop, J. S. Harris, W. J. Turner, E. W. Clark. *1909:* R. Y. Cook, W. A. Lathrop, J. M. Duane, W. J. Turner, J. S. Wentz. *1910:* 859
R. Y. Cook, W. A. Lathrop, J. M. Duane, W. J. Turner, J. S. Wentz. *1911:* R. Y. Cook, W. A. Lathrop, J. M. Duane, W. J. Turner, J. S. Wentz. *1912:* R. Y. Cook, S. D. Warriner, J. M. Duane, W. J. Turner, J. S. Wentz. *1913:* R. Y. Cook, S. D. Warriner, G. H. Frazier, W. J. Turner, J. S. Wentz.

Officers.—President: *1903:* W. J. Turner. *1904:* W. J. Turner. *1905:* W. J. Turner. *1906:* W. J. Turner. *1907:* W. J. Turner. *1908:* W. A. Lathrop. *1909:* W. A. Lathrop. *1910:* W. A. Lathrop *1911:* W. A. Lathrop. *1912:* S. D. Warriner. *1913:* S. D. Warriner.

Vice president: *1903:* (None.) *1904:* L. A. Riley. *1905:* L. A. Riley. *1906:* L. A. Riley. *1907:* W. A. Lathrop. *1908:* (None.) *1909:* (None.) *1910:* (None.) *1911:* (None.) *1912:* (None.) *1913:* 860
H. F. Baker.

Vice president and general manager: *1903:* (None.) *1904:* (None.) *1905:* (None.) *1906:* (None.) *1907:* (None.) *1908:* R. H. Wilbur. *1909:* R. H. Wilbur. *1910:* R. H. Wilbur. *1911:* R. H. Wilbur. *1912:* R. H. Wilbur. *1913:* R. H. Wilbur.

Vice president and general counsel: *1903:* (None.) *1904:* (None.) *1905:* (None.) *1906:* (None.) *1907:* (None.) *1908:* W. J. Turner. *1909:* W. J. Turner. *1910:* W. J. Turner. *1911:* W. J. Turner. *1912:* W. J. Turner. *1913:* W. J. Turner.

861 Secretary: *1903:* J. R. Sagee. *1904:* J. R. Sagee. *1905:* H. F. Baker. *1906:* H. F. Baker. *1907:* H. F. Baker. *1908:* H. F. Baker. *1909:* H. F. Baker. *1910:* H. F. Baker. *1911:* H. F. Baker. *1912:* H. F. Baker. *1913:* H. F. Baker.

Assistant secretary: *1903:* (None.) *1904:* H. F. Baker. *1905:* J. F. Hoffmeister. *1906:* J. F. Hoffmeister. *1907:* S. S. Sneyd. *1908:* S. S. Sneyd. *1909:* S. S. Sneyd. *1910:* S. S. Sneyd. *1911:* S. S. Sneyd. *1912:* S. S. Sneyd. *1913:* S. S. Sneyd.

862 Treasurer: *1903:* F. S. Fowler. *1904:* J. R. Sager. *1905:* H. F. Baker. *1906:* H. F. Baker. *1907:* H. F. Baker. *1908:* H. F. Baker. *1909:* H. F. Baker. *1910:* H. F. Baker. *1911:* H. F. Baker. *1912:* H. F. Baker. *1913:* H. H. Pease.

Assistant treasurer: *1903:* J. R. Sager. *1904:* H. F. Baker. *1905:* F. S. Fowler. *1906:* F. S. Fowler. *1907:* F. S. Fowler. *1908:* F. S. Fowler. *1909:* S. S. Sneyd. *1910:* S. S. Sneyd. *1911:* S. S. Sneyd. *1912:* S. S. Sneyd. *1913:* O. E. Neff.

Comptroller: *1903:* (None.) *1904:* (None.) *1905:* (None.) *1906:* (None.) *1907:* (None.) *1908:* (None.) *1909:* (None.)
863 *1910:* E. M. Reynolds. *1911:* E. M. Reynolds. *1912:* E. M. Reynolds. *1913:* E. M. Reynolds.

Auditor: *1903:* (None.) *1904:* (None.) *1905:* (None.) *1906:* (None.) *1907:* (None.) *1908:* E. Hughes. *1909:* E. Hughes. *1910:* E. Hughes. *1911:* E. Hughes. *1912:* E. M. Kuntz. *1913:* E. M. Kuntz.

864 Mr. Kingsbury also read in evidence a statement furnished by Mr. Wm. Jay Turner in regard to officers and employees of the Lehigh and New England Railroad Co., other than those shown in the annual reports, who also render services to the Lehigh Coal and Navigation Company, or its affiliated companies:

The following is a list of such officers and employees: Superintendent, real estate agent, auditor, purchasing agent, assistant purchasing agent, assistant treasurer, assistant secretary, and assistant engineer. Of the salaries received by these various persons, the L. & N. E. R. R. pays the following percentage:

	Per cent.
Superintendent	80
Real estate agent	33⅓
Auditor	76
Purchasing agent	20
Assistant purchasing agent	41⅔
Assistant treasurer	43½
Assistant secretary	30
Assistant engineer	50

Mr. Kingsbury also read in evidence the following statement of the officers and directors of the Lehigh and Hudson River Railway Co., under its various corporate names, from Dec., 1883, to Dec., 1913, furnished by Judge Beattie:

STATEMENT OF THE OFFICERS AND DIRECTORS OF THE LEHIGH & HUD- 865
SON RIVER RAILWAY COMPANY UNDER ITS VARIOUS CORPORATE NAMES, FROM DECEMBER 3D, 1883, TO DECEMBER, 1913.

Prepared under the direction of John J. Beattie, solicitor for the defendant, the Lehigh & Hudson River Railway Company, in the action of the United States of America against the Reading Company et al., at the request of Howard Thayer Kingsbury, special assistant to the Attorney General.

For the year ending December 31, 1883.

Officers: President, Grinnell Burt; vice president, Chas. E. Noble; secretary and treasurer, Daniel B. Halstead.

Directors.—Grinnell Burt, George W. Sanford, Richard Wisner, William C. Sheldon, Daniel B. Halstead, Thomas C. Platt, John S. Martin, Chas. E. Noble, Garret A. Hobart, Frederic A. Potts, James B. Titman, Charles Scranton, John H. Seed.

The minutes of the company do not show the names of the direc- 866
tors elected in 1884, but from the records of the first meeting held in 1885, the same directors seem to have been reelected.

For the year ending December 31, 1885.

Officers.—President, Grinnell Burt; vice president, Joseph S. Harris; secretary, Daniel B. Halstead; treasurer, John Sayer.

Directors.—Grinnell Burt, John S. Martin, Garret A. Hobart, Frederic A. Potts, Francis C. Yarnall, Edward W. Clark, William C. Sheldon, George W. Sanford, James B. Titman, Joseph S. Harris, Francis R. Cope, Edward Lewis, W. Rockhill Potts.

For the year ending September 30, 1886.

Officers.—President, Grinnell Burt; vice president, Joseph S. Har- 867
ris; secretary, Daniel B. Halstead; treasurer, John Sayer.

Directors.—Grinnell Burt, Joseph S. Harris, Frederic A. Potts, William C. Sheldon, Garret A. Hobart, Edward W. Clark, John S. Martin, Francis C. Yarnall, Francis R. Cope, W. Rockhill Potts, James B. Titman, George W. Sanford, Edward Lewis.

For the year ending September 30, 1887.

Officers.—President, Grinnell Burt; vice president, Joseph S. Har- 868
ris; secretary, Daniel B. Halstead; treasurer, John Sayer.

Directors.—Grinnell Burt, Joseph S. Harris, Frederic A. Potts, George W. Sanford, Edward W. Clark, William C. Sheldon, John S. Martin, Francis C. Yarnall, R. T. Davies, James B. Titman, W. Rockhill Potts, Garret A. Hobart, H. O. Marsh.

For the year ending September 30, 1888.

Officers.—President, Grinnell Burt; vice president, Joseph S. Harris; secretary, Daniel B. Halstead; treasurer, John Sayer.

Directors.—E. D. Adams, G. F. Baker, Grinnell Burt, E. W. Clark, Austin Corbin, Joseph S. Harris, Garret A. Hobart, Edward Lewis, John S. Martin, J. R. Maxwell, George W. Sanford, William C. Sheldon, Francis C. Yarnall.

For the year ending September 30, 1889.

869 *Officers.*—President, Grinnell Burt; vice president, Joseph S. Harris; secretary, Daniel B. Halstead; treasurer, John Sayer.
Directors.—E. D. Adams, G. F. Baker, Grinnell Burt, E. W. Clark, Austin Corbin, Joseph S. Harris, Garret A. Hobart, Edward Lewis, John S. Martin, J. R. Maxwell, George W. Sanford, George R. Sheldon, Francis C. Yarnall.

For the year ending June 30, 1890.

Officers.—President, Grinnell Burt; vice president, Joseph S. Harris; secretary, Daniel B. Halstead; treasurer, John Sayer.
870 *Directors.*—E. D. Adams, G. F. Baker, Grinnell Burt, E. W. Clark, Austin Corbin, Joseph S. Harris, Garret A. Hobart, Edward Lewis, John S. Martin, J. R. Maxwell, George W. Sanford, George E. Sheldon, Francis C. Yarnall.

For the year ending June 30, 1891.

Officers.—President, Grinnell Burt; vice president, Joseph S. Harris; secretary, Daniel B. Halstead; treasurer, John Sayer.
Directors.—E. D. Adams, G. F. Baker, Grinnell Burt, E. W. Clark, Chas. Caldwell, Austin Corbin, Joseph S. Harris, Garret A. Hobart, Edward Lewis, J. R. Maxwell, John S. Martin, W. R. Potts, George
871 W. Sanford.

For the year ending June 30, 1892.

Officers.—President, Grinnell Burt; vice president, Joseph S. Harris; secretary, Daniel B. Halstead; treasurer, John Sayer.
Directors.—E. D. Adams, C. F. Baker, Grinnell Burt, Charles Caldwell, E. W. Clark, Henry Graves, Joseph S. Harris, Garret A. Hobart, Edward Lewis, John S. Martin, J. R. Maxwell, W. R. Potts, George W. Sanford.

For the year ending June 30, 1893.

872 *Officers.*—President, Grinnell Burt; vice president, Joseph S. Harris; secretary, Daniel B. Halstead; treasurer, John Sayer.
Directors.—E. D. Adams, G. F. Baker, Grinnell Burt, Chas. Caldwell, Henry Graves, Joseph S. Harris, Garret A. Hobart, Edward Lewis, John S. Martin, W. R. Potts, George W. Sanford.

For the year ending June 30, 1894.

873 *Officers.*—President, Grinnell Burt; vice president, Joseph S. Harris; secretary, Daniel B. Halstead; treasurer, John Sayer.
Directors.—E. D. Adams, G. F. Baker, Grinnell Burt, Chas. Caldwell, E. B. Leisenring, Henry Graves, Joseph S. Harris, Garret A. Hobart, Edward Lewis, John S. Martin, J. R. Maxwell, W. R. Potts, George W. Sanford.

For the year ending June 30, 1895.

Officers.—President, Grinnell Burt; vice president, C. Pardee; secretary, Daniel B. Halstead; treasurer, John Sayer.
Directors.—E. D. Adams, G. F. Baker, Grinnell Burt, Chas. Caldwell, Henry Graves, Joseph S. Harris, Garret A. Hobart, Edward Lewis, John S. Martin, J. R. Maxwell, C. Pardee, W. R. Potts, George W. Sanford.

For the year ending June 30, 1896. 874

Officers.—President, Grinnell Burt; vice president, C. Pardee; secretary, Daniel B. Halstead; treasurer, John Sayer.
Directors.—E. D. Adams, G. F. Baker, Grinnell Burt, Chas. Caldwell, Henry Graves, Joseph S. Harris, Garret A. Hobart, Edward Lewis, John S. Martin, J. R. Maxwell, C. Pardee, W. R. Potts, George W. Sanford.

For the year ending June 30, 1897.

Officers.—President, Grinnell Burt; vice president, Lewis A. Riley; secretary, Daniel B. Halstead; treasurer, John Sayer.
Directors.—G. F. Baker, Grinnell Burt, Chas. Caldwell, H. C. 875
Fahnestock, Henry Graves, Joseph S. Harris, Garret A. Hobart, Edward Lewis, John S. Martin, J. R. Maxwell, W. R. Potts, Lewis A. Riley, George W. Sanford.

For the year ending June 30, 1898.

Officers.—President, Grinnell Burt; vice president, Lewis A. Riley; secretary, Daniel B. Halstead; treasurer, John Sayer.
Directors.—G. F. Baker, Grinnell Burt, Chas. Caldwell, H. C. 876
Fahnestock, Henry Graves, Joseph S. Harris, Garret A. Hobart, Edward Lewis, William Vail Martin, J. R. Maxwell, W. R. Potts, Lewis A. Riley, George W. Sanford.

For the year ending June 30, 1899.

Officers.—President, Grinnell Burt; vice president, Lewis A. Riley; secretary, Daniel B. Halstead; treasurer, John Sayer.
Directors.—Grinnell Burt, G. F. Baker, Chas. Caldwell, H. C. Fahnestock, Henry Graves, Joseph S. Harris, Garret A. Hobart, Edward Lewis, William Vail Martin, J. R. Maxwell, W. R. Potts, Lewis A. Riley, George W. Sanford.

For the year ending June 30, 1900.

Officers.—President, Grinnell Burt; vice president, Lewis A. Riley; secretary, Daniel B. Halstead; treasurer, John Sayer.
Directors.—Grinnell Burt, G. F. Baker, Chas. Caldwell, James M. 877
Duane, H. C. Fahnestock, Henry Graves, Joseph S. Harris, Edward Lewis, William V. Martin, J. R. Maxwell, W. R. Potts, Lewis A. Riley, Richard Wisner.

For the year ending June 30, 1901.

Officers.—President, Grinnell Burt; vice president, Lewis A. Riley; secretary and treasurer, John Sayer.
Directors.—Grinnell Burt, G. F. Baker, Chas. Caldwell, James M. 878
Duane, H. C. Fahnestock, Henry Graves, Joseph S. Harris, Edward Lewis, William V. Martin, J. R. Maxwell, W. R. Potts, Lewis A. Riley, Richard Wisner.

For the year ending June 30, 1902.

Officers.—President, Lewis A. Riley; secretary and treasurer, John Sayer.

Directors.—George F. Baer, George F. Baker, Chas. Caldwell (deceased), R. T. Davies, James M. Duane, Alfred Ely, H. C. Fahnestock, Henry Graves Joseph S. Harris, William Vail Martin, J. R. Maxwell, W. R. Potts, Lewis A. Riley.

For the year ending June 30, 1903.

Officers.—President, Lewis A. Riley; secretary and treasurer, John Sayer.

879 *Directors.*—George F. Baer, George F. Baker, R. T. Davies, James M. Duane, Alfred Ely, H. C. Fahnestock, Thomas P. Fowler, Henry Graves, William Vail Martin, Joseph S. Harris, J. R. Maxwell, W. R. Potts, Lewis A. Riley.

For the year ending June 30, 1904.

Officers.—President, Lewis A. Riley; secretary and treasurer, John Sayer.

Directors.—George F. Baer, George F. Baker, R. T. Davies, James M. Duane, Alfred Ely, H. C. Fahnestock, Thomas P. Fowler, Henry Graves, Joseph S. Harris, William Vail Martin, J. R. Maxwell, W. R. Potts, Lewis A. Riley.

For the year ending June 30, 1905.

880 *Officers.*—President, Lewis A. Riley; secretary and treasurer, John Sayer.

Directors.—George F. Baer, R. T. Davies, James M. Duane, Alfred Ely, Thomas P. Fowler, Joseph S. Harris, J. R. Maxwell, W. R. Potts, S. M. Prevost (deceased), Lewis A. Riley, E. B. Thomas, W. H. Truesdale, F. B. Underwood.

For the year ending June 30, 1906.

Officers.—President, Lewis A. Riley; vice president and general manager, Morris Rutherfurd; secretary and treasurer, John Sayer.

881 *Directors.*—George F. Baer, R. T. Davies, James M. Duane, Alfred Ely, Thomas P. Fowler, Joseph S. Harris, J. R. Maxwell, W. R. Potts, Lewis A. Riley, E. B. Thomas, W. H. Truesdale, J. B. Thayer, F. B. Underwood.

For the year ending June 30, 1907.

Officers.—President, Lewis A. Riley; vice president and general manager, Morris Rutherfurd; secretary and treasurer, John Sayer.

Directors.—George F. Baer, James M. Duane, Robert W. de Forest, Alfred Ely, Thomas P. Fowler, Joseph S. Harris, J. R. Maxwell, Lewis A. Riley, Morris Rutherfurd, J. B. Thayer, E. B. Thomas, W. H. Truesdale, F. B. Underwood.

For the year ending June 30, 1908.

Officers.—President, Lewis A. Riley; vice president and general manager, Morris Rutherfurd; secretary and treasurer, John Sayer.
Directors.—George F. Baer, James M. Duane, Robert W. de Forest, 882
Thomas P. Fowler, Joseph S. Harris, J. R. Maxwell, Lewis A. Riley, Morris Rutherfurd, J. B. Thayer, E. B. Thomas, W. H. Truesdale, F. D. Underwood, Rollin H. Wilbur.

For the year ending June 30, 1909.

Officers.—President, Lewis A. Riley; vice president and general manager, Morris Rutherfurd; secretary and treasurer, John Sayer.
Directors.—George F. Baer, James M. Duane, Robert W. de Forest, 883
Thomas P. Fowler, Joseph S. Harris, J. R. Maxwell, Lewis A. Riley, Morris Rutherfurd, John B. Thayer, Eben W. Thomas, William H. Truesdale, F. D. Underwood, Rollin H. Wilbur.

For the year ending June 30, 1910.

Officers.—President, Lewis A. Riley; vice president and general manager, Morris Rutherfurd; secretary and treasurer, John Sayer.
Directors.—George F. Baer, James M. Duane, Robert W. de Forest, Thomas P. Fowler, Joseph S. Harris (deceased 1910), J. Rogers Maxwell, Lewis A. Riley, Morris Rutherfurd, John B. Thayer, E. B. Thomas, William H. Truesdale, Frederick D. Underwood, Rollin H. Wilbur.

For the year ending June 30, 1911.

Officers.—President, Lewis A. Riley; vice president and general manager, Morris Rutherfurd; secretary and treasurer, John Sayer.
Directors.—George F. Baer, James M. Duane, Robert W. de Forest, 884
Thomas P. Fowler, William A. Lathrop, Lewis A. Riley, Morris Rutherfurd, Edward T. Stotesbury, J. B. Thayer, E. B. Thomas, William H. Truesdale, Frederick D. Underwood, Rollin H. Wilbur.

For the year ending June 30, 1912.

Officers.—President, Lewis A. Riley; vice president and general manager, Morris Rutherfurd; secretary and treasurer, John Sayer.
Directors.—George F. Baer, James M. Duane, Robert W. de Forest, 885
Thomas P. Fowler, William A. Lathrop (deceased 1912), Lewis A. Riley, Morris Rutherfurd, Edward T. Stotesbury, John B. Thayer (deceased 1912), Eben B. Thomas, William H. Truesdale, F. C. Underwood, Rollin H. Wilbur.

For the year ending June 30, 1913.

Officers.—President, Lewis A. Riley; vice president and general manager, Morris Rutherfurd; secretary and treasurer, John Sayer.
Directors.—George F. Baer, Robert W. de Forest, George D. Dixon, Thomas P. Fowler, George H. Frazier, Lewis A. Riley, Morris Rutherfurd, Edward T. Stotesbury, Eben B. Thomas, William H. Truesdale, Frederick D. Underwood, Samuel D. Warriner, Rollin D. Wilbur.

Mr. Kingsbury also read in evidence a statement, furnished by Judge Beattie, in regard to the acquisition of certain shares of stock of the Lehigh and Hudson River Railway Co. by Mr. Geo. F. Baer.

Judge Beattie states that he furnishes this statement under protest and objection, on the ground that it is wholly immaterial and irrelevant to any of the issues raised upon the petition and answers in the suit now pending, and concerning only corporations not parties to the suit.

886 The statement follows:

Between the 3d day of December, 1901, and the 7th day of November, 1906, Mr. Baer became the holder of 6,203 shares of the stock of this company. In 1904 he transferred to the D. L. & W., Pennsylvania Railroad Company and E. B. Thomas 1,150 shares each, and to the Erie Railroad Company 650 shares. In 1906 he transferred to the Erie Railroad Company 500 shares.

Mr. Kingsbury also read in evidence a statement in regard to the disposition of freight charges by the Philadelphia and Reading Railroad Co. in favor of the Philadelphia and Reading Coal and Iron Co., furnished by Mr. Reynolds, as follows:

The property of the Philadelphia & Reading Coal and Iron Co. was, on February 20, 1893, placed in the hands of receivers appointed by the Circuit Court of the United States for the Eastern District of Pennsylvania. Prior to that time the P. & R. C. & I. Co., following a long established usage, kept a running account with the P. & R. Rd. Co. giving all the current charges and credits in connection with the operation of the company.

On the date of the appointment of said receivers, February 20, 1893, the current account of the coal and iron company with the railroad company showed a credit total in favor of the railroad company of.		$17,274,828.88
887 Of which freight and tolls amount to.....	$11,767,238.88	
On the same date the credit total in favor of the coal and iron company amounted to.....		15,405,230.91
Showing a balance indebtedness to the railroad company from the coal and iron company of.....		1,869,597.97
During the said receiver-ship, which lasted until Nov. 30, 1896, this balance in favor of the railroad company was increased by.....		2,959,988.17
		4,829,586.14
The current account of the receivers of the coal and iron company with the receivers of the railroad company showing at the end of the receivership a credit total in favor of the receivers of the railroad company of.....	$5,050,864.27	
Of which freights and tolls amount to.	$1,686,282.84	
At the same time the credit total in favor of the receivers of the coal and iron company amounted to..	221,278.13	
		4,829,586.14

This balance of $4,829,586.14 became a part of the indebtedness (about $69,000,000) of the coal and iron company to the railroad company, which constituted the amount of the latter's claim against
888 the coal and iron company. Among the assets of the P. & R. Railroad Company sold at the receivers' public sale on September 23, 1896,

and purchased by Messrs. Coster and Stetson, was the whole of the railroad company's claim against the coal and iron company, including this balance.

Mr. Kingsbury also read in evidence, from Public Document No. 1442, 62nd Congress, third session, entitled "**Increase in Prices of Anthracite Coal,**" two passages on pp. 11 and 12 thereof.

Mr. REYNOLDS. The defendants object to that going in as testimony, as it is merely a conclusion, and evidently hearsay—shows so intrinsically—and the defendants have no opportunity whatever of cross-examination of the one who compiled it.

The passages are as follows:

INCREASE IN WHOLESALE PRICES.

The increase in wholesale prices, as measured by the net receipts from sales of anthracite coal by the operators since the agreement of May 20, 1912, amounted to an average of 25.82 cents per ton.[a] if the prices existing in June, July, August, and September, 1911, are compared with the prices realized during the same months of 1912. On this basis of comparison the average increase in the price of sizes of coal prepared for domestic consumption amounted to 31.23 cents per ton and the average increase on pea coal and the smaller steam sizes amounted to 16.14 cents per ton.

This increase was in part due to the unusually active demand for coal in the summer of 1912 and can not properly be assumed to be a 889
permanent increase. It seems proper to consider as the probable permanent increase the advances in the circular prices asked for coal. A weighted calculation of the average increase[b] in the circular prices of the Philadelphia & Reading Coal & Iron Co. for the prepared sizes of white ash coal shows that the average increase at tidewater was 34.3 cents per ton and on sales for railroad shipments 23.2 cents per ton. The average for all sales (allowing 25 per cent of the total shipments for tidewater sales in accordance with the results of 1911) was 26 cents per ton on the prepared sizes. No similar calculation can be made for the steam sizes, since no circular prices are ordinarily issued to cover steam sizes at tidewater and even when issued have little significance.

(Page 12:)

BENEFITS TO ANTHRACITE MINE WORKERS FROM AGREEMENT OF 1912.

The anthracite mine workers were benefitted by the agreement of 890
May 20, 1912, not only through a net increase in their wage rates, which averaged 5.6 per cent, but through the concession of certain working conditions which were considered of importance, though they can not be measured in terms of money. An additional item of importance to the miners was the partial recognition of their organization, both in the negotiations and in the form in which the agreement was signed.

[a] Average for seven companies, covering about 70 per cent of total sales. See Ch. III, p. 20.
[b] The circular increase of 25 cents per ton on chestnut coal, announced in November, 1910, or April, 1911, by the various companies, is included in this calculation.

The advance of 5.6 per cent in mine workers' wages represents an average increase of 9 cents per ton in the cost of producing coal, and on the basis of the shipments from June to December, 1912, amounted in round numbers to $4,000,000.

Mr. Kingsbury offered in evidence a statement in regard to the history of the defendant Lehigh and Hudson River Railway Co., furnished by Judge Beattie (marked "**Gov. Ex. 76, C. H. G.**").

In the District Court of the United States, Eastern District of Pennsylvania.

UNITED STATES OF AMERICA, PETITIONER, *against* THE READING COMPANY AND OTHERS, DEFENDANTS.

Exhibit on behalf of the defendant the Lehigh and Hudson River Railway Company.

The Warwick Valley Railroad Company was organized on the 8th day of March, 1860, and built and operated its road from Warwick, New York, to Greycourt, New York, a distance of 11 miles, where it connected with what is now known as the Erie Railroad Company.

On the 22nd day of May, 1879, the Wawayanda Railroad Company was organized and built its line from Warwick, New York, to McAfee, New Jersey, where it connected with the McAfee Branch of the Sussex Railroad Company, extending from McAfee to Franklin Junction, New Jersey.

On the 30th day of January, 1880, the Warwick Valley Railroad Company and the Wawayanda Railroad Company were consolidated under the name of the Warwick Valley Railroad Company.

On the 6th day of January, 1881, the Lehigh and Hudson River Railroad Company was organized under the laws of New Jersey, and on the 16th day of May, 1881, that company was consolidated with the Pequest & Wallkill Railroad Company, which had been incorporated under the laws of New Jersey on the 23rd day of February, 1866.

On the 1st day of September, 1881, the Lehigh and Hudson River Railroad Company purchased from the Sussex Railroad Company what was known as the McAfee Branch of the Sussex Railroad Company, and, upon such purchase, the line of the Warwick Valley Railroad Company, extending from Greycourt, New York, to McAfee, New Jersey, in connection with the line of the Lehigh and Hudson River Railroad Company, formed a direct and continuous line of railroad to Belvidere, New Jersey, where it connected with the Pennsylvania Railroad.

On the 12th day of January, 1882, the Warwick Valley Railroad Company and the Lehigh and Hudson River Railroad Company were consolidated under the corporate name of the Lehigh and Hudson River Railway Company.

In the year 1885, the company was compelled to fund the coupons upon its issue of bonds, in the sum of $800,000, and the default in the payment of interest thereon continued for two years.

In the year 1885, the Lehigh Coal & Navigation Company became the owner of a minority interest of the stock of the company.

On Nov. 28th, 1888, the Orange County Railroad Company was organized, and built its line of railroad from a point of connection with the Lehigh and Hudson River Railway Company near Greycourt, New York, to Maybrook, New York.

The line of the Orange County Railroad Company was constructed in the year 1889 with moneys furnished equally by the Lehigh Coal & Navigation Company and the Central Railroad Company of New Jersey, and the stock control of the Orange County Railroad Company became vested in the Lehigh and Hudson River Railway Company upon its repayment to the Lehigh Coal & Navigation Company and the Central Railroad Company of New Jersey of the sum of $367,000., the actual cost of the construction of the Orange County Railroad.

On the 27th day of February, 1889, the Lehigh and Hudson River Railway Company entered into an agreement with the Pennsylvania Railroad Company, for a term of 99 years from said date, and thereafter until terminated by 18 months notice in writing. Under that agreement the Pennsylvania Railroad Company acquired the right to run its engines and cars over the line of the Lehigh and Hudson River Railway Company from the connection at Belvedere to Greycourt, and a connection with the Orange County Railroad at Greycourt, and the Lehigh and Hudson River Railway Company acquired the right to run its engines and trains over the Pennsylvania Railroad from Belvedere to Phillipsburg, N. J.

Up to that time, all the freight passing over the line of the Lehigh and Hudson River Railway Company destined to points in New England was delivered to the Erie Railroad at Greycourt, and was carried to Newburgh on the Hudson, and there loaded upon floats and transferred to the line of the New England Railroad Company on the east shore of the river.

Soon after the completion of the Orange County Railroad this method of shipment was abandoned, and all freight passing over the Lehigh and Hudson River Railway, destined to points in New England, was transported over the line of the latter and of the Orange County Railroad Company to Maybrook, New York, where it was delivered to what is now known as the Central New England Railroad Company, and transported by that line to New England in connection with the New York, New Haven & Hartford Railroad.

On the 25th day of July, 1889, the South Easton and Phillipsburg Railroad Company of New Jersey and the South Easton and Phillipsburg Railroad Company of Pennsylvania were organized to build a railroad bridge across the Delaware River at Phillipsburg, giving the Lehigh and Hudson River Railway direct access to the city of Easton, Pa.

The bridge was built with money furnished by the Lehigh Coal & Navigation Company and the Central Railroad Company of New Jersey, at a cost of $171,690.94; which amount was thereafter repaid by the Lehigh and Hudson River Railway Company to said companies.

Since the completion of the bridge, the direct operating line of the Lehigh and Hudson River Railway Company has been from Easton, Pa., to Maybrook, N. Y.

On the 23rd day of November, 1907, the Orange County Railroad Company was consolidated with the Lehigh and Hudson River Railway Company, under the name of the Lehigh and Hudson River Railway Company.

On the 2nd day of April, 1912, the South Easton and Phillipsburg Railroad Company of New Jersey and the South Easton and Phillipsburg Railroad Company of Pennsylvania were consolidated with the Lehigh and Hudson River Railway Company; and at the same time the Mine Hill Railroad Company, connected and located at Franklin Junction, New Jersey, was also consolidated with the Lehigh and Hudson River Railway Company.

At the time of the consolidation of the Orange County Railroad Company with the Lehigh and Hudson River Railway Company, the last named company was the owner of the capital stock of the first named company, of the par value of $200,000. This stock, by the terms of the agreement of consolidation, became exchangeable for the stock of the Lehigh and Hudson River Railway Company in an equal amount, and the authorized capital stock of the latter company was increased in that amount.

Upon the consolidation of the South Easton and Phillipsburg Railroad Companies of New Jersey and Pennsylvania, and the Mine Hill Railroad Company with the Lehigh and Hudson River Railway Company, the last named company was the owner of the capital stock of the said three first named companies, of the par value of $180,000. This stock, by the terms of the agreement of consolidation, became exchangeable for the stock of the Lehigh and Hudson River Railway Company in an equal amount, and the authorized capital stock of the latter company was increased in that amount, making the total authorized capital stock of the Lehigh and Hudson River Railway Company the sum of $1,720,000, of which amount stock of the par value of $380,000 is now in the treasury of the company.

On July 1, 1890, the Lehigh and Hudson River Railway Company executed its general mortgage to Central Trust Company of New York, as trustee, to secure bonds in the sum of $3,000,000; of which bonds in the sum of $1,062,000 were guaranteed by the Lehigh Coal & Navigation Company and the Central Railroad Company of New Jersey; bonds in the sum of $330,000 were reserved for the acquisition of additional railways.

Of the amount so reserved, $82,000 of bonds were issued upon the purchase and consolidation of the Mine Hill Railroad Company.

Upon the payment of the prior lien bonds now outstanding, in the sum of $164,000, the said general mortgage will be the only lien by way of mortgage on all the franchises and property of the Lehigh and Hudson River Railway Company from Easton, Pa., to Maybrook, N. Y., the lien of said general mortgage having been extended by supplemental mortgages to all the franchises and property of the other companies consolidated with the Lehigh and Hudson River Railway Company, as heretofore stated.

Thus, through the aid given to this company by the Lehigh Coal & Navigation Company and the Central Railroad Company of New Jersey at a time when it was practically bankrupt, this company has established itself as a part of an all-rail through line from the East to

the West, with adequate facilities and equipment, and a rapidly increasing traffic, as shown by the following tables:

Earnings of the Lehigh and Hudson River Railway Company for the year ending June 30, 1891.

Freight	$339,373.94
Passenger	23,425.79
Mail	3,141.00
Express	2,862.48
Miscellaneous	12,899.16
Total	381,702.37
Income from Orange County Railroad, 6 months ending June 30, 1891	1,411.04
Total	383,113.41

Statement of operations, earnings, etc., for ten fiscal years ended June 30, 1913.

	1904	1905	1906	1907	1908	1909	1910	1911	1912	1913
Miles of R. R. operated	77.20	77.20	85.90	96.60	96.60	96.60	96.60	96.60	96.60	96.60
Passenger train mileage	79,220	113,242	113,286	117,910	130,604	87,990	66,888	67,017	67,844	106,554
Freight train mileage	170,143	148,426	220,253	352,040	318,834	478,400	495,786	495,879	557,039	591,642
Mixed train mileage	65,858	17,680	13,732	27,406	22,932	32,928	47,786	52,568	57,704	64,856
Total revenue train mileage	315,221	279,348	347,271	497,356	472,370	599,318	610,460	615,464	682,587	763,052
Mileage nonrevenue trains	11,044	18,135	23,670	36,695	60,374	35,677	39,455	21,969	39,057	36,128
Total train mileage	326,265	297,483	370,941	534,001	532,744	634,995	649,915	637,433	721,644	799,180
Passengers carried	132,027	124,208	136,669	154,657	173,097	160,333	152,172	157,002	163,060	158,148
Passenger one mile	1,528,535	1,541,450	1,754,136	1,925,027	2,179,083	1,970,616	1,849,054	1,955,150	1,989,670	1,917,939
Freight (tons) moved	976,976	905,377	1,482,248	1,974,859	1,935,213	3,009,983	3,629,848	3,757,035	4,267,227	4,700,898
Freight (tons) one mile	51,833,402	45,207,819	70,678,038	109,766,919	111,986,219	200,075,041	244,561,312	257,807,254	299,423,415	331,727,702
Passenger earnings	$34,608	$35,009	$40,016	$44,414	$49,596	$46,365	$44,383	$46,376	$47,444	$94,903
Freight earnings	415,170	490,450	567,189	781,866	785,519	1,184,750	1,378,531	1,409,773	1,553,458	1,735,913
Mail and express earnings	9,847	10,403	17,095	14,362	15,314	16,455	12,182	13,686	14,473	14,411
Miscellaneous earnings	27,488	18,257	2,671	3,692	3,090	3,746	4,937	4,960	6,515	4,208
Gross earnings	487,113	464,110	626,971	844,334	851,519	1,251,316	1,440,033	1,465,795	1,621,891	1,849,435
Operating expenses	286,952	292,795	372,699	540,051	607,524	868,656	889,401	907,756	1,063,234	1,242,608
Net earnings	200,161	171,315	254,302	304,283	243,995	382,660	550,632	558,039	558,657	606,827
Other receipts			4,958	24,243					14,964	4,933
Net income	200,161	171,315	259,260	328,526	243,995	382,660	550,632	558,039	573,621	611,760
Interest	130,087	133,116	135,037	155,898	167,506	173,586	178,838	175,695	166,384	158,846
Taxes	9,724	10,392	11,190	23,208	31,446	32,913	37,413	41,767	44,250	48,067
Other deductions	12,024	5,784	4,541	106,033	33,511	95,761	80,209	96,313	126,235	132,672
Surplus	48,326	22,023	72,492	43,387	11,532	80,400	245,172	244,264	236,771	272,174
Gross earnings per mile	6,309.75	6,011.79	7,299.00	8,740.00	8,815.00	12,953.00	14,907.00	15,174.00	16,790.00	19,145.00
Gross expenses per mile	3,716.99	3,792.68	4,338.00	5,591.00	6,289.00	8,992.00	9,207.00	9,397.00	11,007.00	12,863.00
Net earnings per mile	2,592.76	2,219.11	2,961.00	3,149.00	2,526.00	3,961.00	5,700.00	5,777.00	5,783.00	6,282.00
Expenses to earnings, ratio	58.91%	63.08%	59.44%	63.96%	71.34%	69.42%	61.70%	61.92%	65.55%	67.19%
Average rate per passenger per mile	2.26c.	2.27c.	2.28c.	2.28c.	2.26c.	2.33c.	2.40c.	2.37c.	2.38c.	2.48c.
Average rate per ton per mile	0.80c.	0.85c.	0.80c.	0.71c.	0.70c.	0.59c.	0.56c.	0.54c.	0.52c.	0.516c.

EQUIPMENT, 1913.

Locomotives:		Box cars	75
8 drivers	24	Milk cars	8
6 drivers	19	Stock cars	2
4 drivers	3	Flat cars	14
	46	Gondola cars	475
Passenger cars	5	Service cars	125
Combination cars	6	Cabooses	31
	11	Steam wrecking crane, 75 tons	1
		Steam ditcher	1
			732

The bulk of the traffic carried by the Lehigh and Hudson River Railway Company is delivered by it to or received by it from the Central New England Railway Company at Maybrook, New York. The other carriers delivering to and receiving from the last-named company at practically the same point are the Erie Railroad Company, the New York, Ontario & Western Railroad Company, and the Lehigh and New England Railroad Company.

The Lehigh & Hudson River Railway Company pays a rental or compensation for the use of the yard of the Central New England at Maybrook and for the movement of cars therein, based upon the proportion of cars handled by the Central New England in their yard, and it appears that such proportion for the past five years has been as indicated by the following schedule:

THE LEHIGH AND HUDSON RIVER RAILWAY COMPANY—ACCOUNTING DEPARTMENT.

Number of cars handled through Maybrook yard for L. & H. R. Ry. Co. and the percentage which they bear to the total cars handled at that point.

	Eastbound.		Westbound.		Both directions.	
	Cars.	Per cent of total E. & W.	Cars.	Per cent of total E. & W.	Cars.	Per cent of total E. & W.
Nov., 1913	8,732	27.81	7,701	24.56	16,433	52.40
July, 1913	8,467	29.04	7,792	26.73	16,259	55.77
March, 1913	8,468	28.02	8,281	27.40	16,749	55.42
Nov., 1912	9,696	29.87	8,826	27.19	18,522	57.06
July, 1912	9,014	27.62	8,295	25.42	17,309	53.04
March, 1912	12,002	30.73	10,788	27.62	22,790	58.35
Nov., 1911	9,399	29.09	8,205	25.37	17,604	54.46
July, 1911	7,720	28.42	7,135	26.27	14,855	54.69
March, 1911	7,436	26.91	6,281	22.73	13,717	49.64
Nov., 1910	8,570	28.97	7,057	23.85	15,627	52.82
July, 1910	6,235	26.28	5,397	22.75	11,632	49.03
March, 1910	6,943	26.92	6,707	26.01	13,650	52.93
Nov., 1909	8,645	29.18	7,407	24.72	16,052	53.90
July, 1909	6,802	28.02	6,467	26.64	13,269	54.66
March, 1909	7,124	25.88	7,141	25.94	14,265	51.82
Nov., 1908	9,034	30.12	7,967	26.56	17,001	56.64

WARWICK, N. Y., *February, 1914.*

The traffic relations of the Lehigh and Hudson River Railway Company with the Lehigh Coal & Navigation Company, the Central Railroad Company of New Jersey, and the Philadelphia & Reading Railroad Company, and the volume of traffic carried by it for said companies, compared with such relations and the volume of traffic carried by the Lehigh and Hudson River Railway for other carriers,

in the respective years ending June 30, 1891, and June 30, 1912, are shown by the following tables:

THE LEHIGH AND HUDSON RIVER RAILWAY COMPANY—ACCOUNTING DEPARTMENT.

Statement of tonnage, year ended June 30, 1891.

Total tonnage	637,261	
Total A.—Coal tonnage:		
Freight coal via Newburg		184,806
Via Maybrook:		
A. coal	86,966	
B. coal	48,217	135,183
Merchandise:		
Eastbound:		
C. R. R. to C. N. E	730	
C. R. R. to B. & M	22,027	
P. & R. to C. N. E	209	
P. & R. to B. & M	688	23,654
Westbound:		
C. N. E. to C. R. R	3,940	
C. N. E. to P. & R	72	
B. & M. to C. R. R	736	
B. & M. to P. & R	537	5,285
		348,927
Balance local between L. & H. stations and to and from L. & H. and connecting lines		288,334

Correct.

F. F. WILDRICK, *Auditor.*

THE LEHIGH AND HUDSON RIVER RAILWAY COMPANY—ACCOUNTING DEPARTMENT.

Statement of tonnage, year ending June 30, 1912.

	A coal.	B coal.	Mdse.
A coal:			
C. R. R.-L. V.-P. & R. via Maybrook	730,413		
B coal:			
W. M. and B. & O. via Maybrook		658,405	
P. R. R. via Maybrook		366,256	
Merchandise:			
L. V. R. R. to C. N. E. Ry			18,60
C. R. R. to C. N. E. Ry			15,56
P. & R.-W. M. & B. & O. to C. N. E. Ry			9,13
C. R. R. to N. Y., N. H. & H. R. R			96,06
P. & R. to N. Y., N. H. & H. R. R			39,34
W. M. Ry. to N. Y., N. H. & H. R. R			51,04
B. & O. R. R. to N. Y., N. H. & H. R. R			68,36
C. S. D. & B. R. D. to N. Y., N. H. & H. R. R			229,56
D. L. & W. to C. N. E. & N. Y., N. H. & H. R. R			465,06
C. N. E. to L. V. R. R			65
C. N. E. to C. R. R. of N. J			1,56
C. N. E. to P. & R., W. M. & B. & O			6,66
N. Y., N. H. & H. to C. R. R. of N. J			6,46
N. Y., N. H. & H. to P. & R. Ry			22,56
N. Y., N. H. & H. to W. M			7,16
N. Y., N. H. & H. to B. & O			17,90
N. Y., N. H. & H. to C. S. D. & B. R. D			35,94
C. N. E. & N. Y., N. H. & H. to D., L. & W			145,46
Total	730,413	1,024,661	1,236,95
Total tonnage for year	753,039	1,044,230	2,469,93
Balance L. & H. stations local, and to and from connecting lines	22,626	19,569	1,233,05

Correct.

F. F. WILDRICK, *Auditor.*

WARWICK, N. Y., *February 18, 1914.*

Of the 13,400 shares of the capital stock issued of the Lehigh and Hudson River Railway Company, aside from the stock held by the directors and a few scattering shares, the stock is held and owned as follows:

	Shares.
Delaware, Lackawanna & Western Railroad Company	1,622
Erie Railroad Company	1,621
George F. Baer	1,593
Lehigh Valley Railroad Company	1,621
Lehigh Coal & Navigation Company	5,005
Pennsylvania Railroad Company	1,627

Mr. GORDON. The Government makes a call for a list of the fifty largest stockholders of the Reading Company to be sent to the examiner and incorporated in the record at this point.

Such a list was later furnished for the record, as follows:

List of fifty largest stockholders at close of business March 16, 1914. 891

	1st pref. shares.	2nd pref. shares.	Common shares.	Total shares.	
Lake Shore & Mich. Sthn. Ry. Co., Grand Cen. Ter., New York City	121,300	285,300	200,050	606,650	
Balto. & Ohio R. R. Co., Baltimore, Md	121,300	285,300	200,000	606,600	
P. A. B. Widener, Land Title Bldg., Philadelphia			100,000	100,000	
Whitehouse & Co., 111 Broadway, N. Y. C	9,295	23,436	11,756	44,487	
Pyne, Kendall & Hollister, 55 Wall St., N. Y			31,580	31,580	
Huhn, Ody & Co., 111 Broadway, N. Y	400		29,300	29,700	
George F. Baker, 2 Wall St., New York			17,500	17,500	
A. Iselin & Co., 36 Wall St., New York	14,577	1,100	1,250	16,727	
Oliver H. Payne, 51 Wall St., New York			15,000	15,000	
Est. of Thos. McKean, Drexel Bldg., Phila	11,450		3,400	14,850	
Henry Graves, jr., 30 Broad St., New York	9,000	4,000		13,000	
Potterton Bros., 49 Pine St., New York		12,000	700	12,700	
John B. Manning, 2 Wall St., New York	1,170	2,557	8,907	12,634	
J. W. Davis & Co., 100 Broadway, N. Y	284	300	11,750	12,084	
Baltzer Henckens, S. W. 125th St., N. Y		9,200	2,400	11,600	892
George F. Baer, Reading Terminal, Phila	7,638	387	3,622	11,874	
Horgans & Co., 2 Wall St., New York			11,400	11,400	
Moore & Ashley, 80 Broadway, N. Y			10,830	10,830	
Pearl & Co., 71 Broadway, New York			10,740	10,740	
Lehman Bros., 16 William St., N. Y	1,720	2,763	4,130	9,613	
Charles D. Barney & Co., 25 Broad St., New York			9,375	9,375	
Vivian Gray & Co., London, E. C., Eng			9,060	9,060	
George V. Cridin & Sons, Land Title Bldg., Phila			8,700	8,700	
S. Japhet & Co., London, E. C., Eng			8,110	8,110	
Hallo & Stiegitz, 30 Broad St., N. Y			7,975	7,975	
J. S. Bache & Co., 42 Broadway, N. Y		4	7,610	7,614	
Arthur Lipper & Co., 20 New St., New York		300	7,029	7,329	
Dexter F. Rumsey, Buffalo, N. Y			7,200	7,200	
Cornelius A. Lane, 1211 Clover St., Phila	400	1,700	5,000	7,100	
Strong, Sturgis & Co., 30 Broad St., New York			7,086	7,086	
Henry Graves, 30 Broad St., New York	1,000	6,000		7,000	
Emily A. Watson, 512 5th Av., N. Y	7,000			7,000	893
Stephen Sanford, Amsterdam, N. Y			6,954	6,954	
Henry Clews & Co., 25 Broad St., New York	68	200	6,250	6,518	
Kuch, Loew & Co., 7 Wall St., N. Y		20	6,250	6,270	
Geo. D. Widener est., Land Title Bldg., Phila			6,111	6,111	
James G. Kitchen, 8 Letitia St., Phila	900	2,700	2,500	6,100	
Geo. Eastman, Rochester, N. Y			6,000	6,000	
Park M. Woodley, 77 Spring St., N. Y			6,000	6,000	
Joseph A. Woodley, 77 Spring St., N. Y			6,000	6,000	
Edward H. Graves, 30 Broad St., New York	2,800	2,620		5,420	
M. C. Bouvier & Co., 20 Broad St., New York		100	5,275	5,375	
J. J. Danzig & Co., 100 Broadway, N. Y			5,300	5,300	
Shearson, Hamill & Co., 71 Broadway, N. Y		300	4,950	5,250	
S. B. Chapin & Co., 111 Broadway, N. Y	20		5,196	5,216	
Nathan Snellenburg, 12th & Market Sts., Philadelphia		200	5,000	5,200	
Wm. M. Potts, Wyebrook, Pa	1,000	2,100	2,000	5,100	
Frank W. McElroy, Frick Bldg., Pittsburgh, Pa			5,000	5,000	894
Florence A. V. Twombly, 684 5th Ave., N. Y	5,000			5,000	
Jos. E. Widener, Land Title Bldg., Phila			5,000	5,000	

895 Mr. Gordon offered in evidence the following list of the fifty largest stockholders of the Lehigh Coal and Navigation Company, furnished by the secretary:

List of largest stockholders of the Lehigh Coal & Navigation Company, January 31, 1914.

(Date of record for dividend No. 141 payable Feb. 28, 1914.)

	Regular stock.	Trustee certificate.
John E. Andrus, 4 Hudson Street, Yonkers, New York	250	2,500
Bioren & Co., 314 Chestnut Street, Philadelphia, Penna	880	6,280
M. Clementine Borie, 123 South 12th Street, Philadelphia, Pa	1,616	
Anna J. Bringhurst, Wilmington, Delaware		1,500
Edith C. Bryce, 52 William Street, New York	7,120	
William Cochran, B. Travis Cochran, and William G. Cochran, trustees under will of William C. Cochran, dec'd, care of the Penna. Co., Philadelphia, Pa		1,300
Richard Y. Cook, care of Guarantee Trust & S. D. Co., 318 Chestnut Street, Philadelphia, Pa		3,500
		1,200
896 Annette Cope, care of Girard Trust Company, Philadelphia, Penna		1,205
Caroline E. Cope, care of Girard Trust Company, Philadelphia, Penna		1,130
Peter E. Costello, 314 Arcade Building, 15th & Market Streets, Philadelphia, Penna	405	972
Robert H. Crozer, Keystone Hotel, 16th & Market Streets, Philadelphia	10	1,133
Joseph Henry Culin, Real Estate Trust Company, Philadelphia, Penna	200	1,800
R. L. Day & Co., 256 Congress Street, Boston, Mass		
George H. Earle, jr., the Finance Company of Penna., 424 Chestnut Street, Philadelphia, Penna	1,500	
George H. Earle, jr., Real Estate Trust Company, Philadelphia, Penna		11,707
Richard M. Elliot, North American Building, Philadelphia, Penna	100	1,185
John Farnum & Co., 255 Chestnut Street, Philadelphia, Penna	2,000	
Bernard N. Farren (estate), care of the Penna. Company, Philadelphia, Penna	2,141	222
Charles Fearon & Co., 331 Chestnut Street, Philadelphia, Penna		
897 Fidelity Trust Company, trustee under the will of Richard Smith, dec'd., Philadelphia, Penna	2,530	
Finance Company of Pennsylvania, 424 Chestnut Street, Philadelphia, Penna	600	2,640
S. M. & M. S. Fridenberg, 429 Chestnut Street, Philadelphia, Penna	201	970
Robt. Clendinning & Co., 400 Chestnut Street, Philadelphia, Penna	1,424	921
Daniel W. Grafly, 2008 W. Girard Avenue, Philadelphia, Penna		1,650
Hobart A. Hare, 1801 Spruce Street, Philadelphia, Penna		1,800
Henry R. Hatfield, 723 Walnut Street, Philadelphia, Penna		2,000
Hancke Heucken, 8 West 121st Street, New York City	1,200	823
James R. Hopkins, care of the Penna. Company, Philadelphia, Penna	100	1,020
James G. Kitchen, 55 N. Front Street, Philadelphia, Penna	1,450	
William A. Lathrop (estate), care of Peoples Bank of Wilkes-Barre, 13 Public Square, Wilkes-Barre, Penna	110	1,304
La Fayette Lentz, Mauch Chunk, Pennsylvania	838	987
Sarah A. C. Loyd, 1206 Filbert Street, Philadelphia		1,200
898 George D. McCreary, Market St. Natl. Bank, Philadelphia, Penna	196	1,954
Thomas McKean (estate), 303 Drexel Building, Philadelphia, Penna	19,987	
Charles Norris, Aldine Hotel, Philadelphia, Penna		1,870
The Pennsylvania Company for Insurances on Lives and Granting Annuities, fiscal trustee of the Williamson Free School of Mechanical Trades (endowment fund), Philadelphia, Penna	1,851	
William B. Phillips, Merion Cricket Club, Haverford, Penna	100	1,000
Lewis A. Riley, Lafayette Building, 5th and Chestnut Streets, Philadelphia, Penna	20	11,625
Ringwood Company, 50 Church Street, New York City	1,068	1,203
Charles John Sheepshanks, Stokelake House, Churleigh, S. Devon, England		1,256
Charles K. Smith, 123 Arch Street, Philadelphia, Penna		2,200
Edward B. Smith & Co., Broad and Chestnut Streets, Philadelphia, Penna		5,000
Sullivan Brothers & Co., Real Estate Trust Bldg., Philadelphia, Penna	849	950
899 Jeremiah J. Sullivan, 1910 Walnut Street, Philadelphia, Penna	138	1,380
Nathan Trotter, 36 N. Front Street, Philadelphia, Penna	677	482
Verner & Co., 203 North American Building, Philadelphia, Penna		4,940
Sarah D. Wells, 1131 Spruce Street, Philadelphia	510	1,120
John S. Wentz, 1723 Land Title Building, Philadelphia, Penna	15	1,211
Mary D. Wentz (estate), Land Title Building, Philadelphia		1,633
West End Trust Company, Philadelphia, Pennsylvania		7,901
J. Fred Zimmerman, 918 N. Broad Street, Philadelphia, Penna	1,200	

900 Mr. GORDON. I also read in evidence a statement prepared by Mr. Samuel Dickson in response to a request by the board of managers of the Lehigh Coal and Navigation Company, together with the resolution in response to which it was furnished.

Mr. REYNOLDS. The Central Railroad Company of New Jersey notes an objection to the receipt of any such opinion or construction of the lease as that. The lease is in evidence and speaks for itself, and the Central Railroad Company of New Jersey and the Lehigh and Wilkes-Barre Coal Company both object to any ex parte interpretation put on it by the other party to the contract.

On behalf of the Reading Companies, also note an objection to the receipt as evidence of any ex parte interpretation of the meaning of formal contracts, and a construction of them, as being substitutionary evidence of what the contracts mean, and inadmissible on any theory of evidence.

The statements offered are as follows:

[*Copy of resolution adopted by the board of managers of the Lehigh Coal and Navigation Co., November 4th, 1901, in accordance with which the following letter was written:*]

On motion the following resolution was adopted:

"*Resolved*, That the president and counsel and finance committee be requested to prepare a brief statement to be placed upon our minutes, showing the rights and obligations now existing beween this company and the Central Railroad Company of New Jersey." 901

[*The following statement is incorporated in the minutes immediately after the above resolution, as provided in the resolution itself:*]

PHILADELPHIA, *November 11th, 1901.*

LEWIS A. RILEY, Esqr.,
President, 108 South Fourth Street, Philadelphia.

DEAR SIR: In view of the discussion at the last meeting of the board, and of the resolution then adopted, I submit a summary of the important provisions of the contracts between the Lehigh Coal and Navigation Company, and the Central Railroad Company of New Jersey, in reference to the Lehigh and Susquehanna Railroad, with some explanations of the reasons which led to the adoption of certain clauses in the agreements of 1883 and 1887.

The original agreement of March 31st, 1871, was substantially equivalent to what is known as a lease on shares, and the duty of the lessee is declared, in the fifth article, to be that the demised premises shall be so worked and maintained by the parties of the second part as to secure the largest amount of revenue possible therefrom. At that time the only adverse influence considered was that of the Lehigh Valley Railroad Company, and hence the clauses upon that subject. The other stipulations relate to the transportation of coal, and were intended to secure all the tonnage which the Central Railroad Company of New Jersey or the Wilkes-Barre Coal and Iron Company could furnish. The lessee having assumed the duty of maintaining the railroad in good order and repair, it was further agreed that all additions should be made at the expense of the navigation company. 902

As the two companies had a common interest in the development of the business, no question could arise except as to the propriety and cost of proposed expenditure.

In 1883 the Reading Company took a lease of the Central Railroad Company of New Jersey, and the counsel of the navigation company advised that not only was the contract of 1871 essentially personal, giving no right of assignment to a stranger, but that it created substantially a partnership with the Central Railroad Company as the managing partner; and that the duty of operating the railroad to the best advantage could not be transferred to another company having an adverse interest; and that as it might prove to be to the interest of the Reading Company to develop its own coal mines in preference to those of the Lehigh and Wilkes-Barre Company, and generally to subordinate the Lehigh and Susquehanna Railroad to the lines of which it was the owner, the navigation company could enjoin the transfer of the Lehigh and Susquehanna Railroad. The then president of the navigation company, Mr. Harris, submitted these views to Mr. Gowen, who acquiesced in their fairness, and as the result of protracted negotiations the agreement of May 29th, 1883, was exe-
903 cuted. The original agreement of 1871 was reaffirmed, and in the third section the Reading Company entered into stipulations which fully protected the interests of this company. It bound itself to develop the business of the railroad, in accordance with the provisions of the agreement of 1871; to cause additional railroads to be built under the terms of the contract; and to cause the development of the Lehigh and Wilkes-Barre Coal Company's lands to proceed *pari passu* with that of the lands of the Reading Coal and Iron Company, so as to maintain the then existing ratio. By the fourth section it agreed that the minimum rental should never be less than $1,414,400, and having consented to this suggestion, Mr. Gowen responded by asking that a maximum should be named, and this was agreed to and fixed at $2,043,000, "together with a further sum in each year equal to 7 per cent upon the amounts which shall be charged after December 31st, 1882, upon the books of the Lehigh Coal and Navigation Company for payments for right of way or for expenditures made or to be made by the Central Railroad Company of New Jersey or the Philadelphia and Reading Railroad Company for construction, as shown by the accounts rendered or to be rendered by either of said corporations under the first and second mutual covenants of the agreement of March 31st, 1871." In this connection it should be noted that a still further sum is to be added to the maximum rental of the Lehigh and Susquehanna Railroad, as defined by clause 4 of the agreement of July 10th, 1889, between the Lehigh Coal and Navigation Company and the Central Railroad of New
904 Jersey, respecting their relations to the Allentown Terminal Railroad Company.

Receivers of the Philadelphia and Reading Railroad were appointed in 1884, who retained possession of the Central Railroad of New Jersey and of the Lehigh and Susquehanna Railroad until the latter part of 1886. Upon a bill filed in the Circuit Court of the United States for the Western District of Pennsylvania, in the latter part of 1886, John S. Kennedy and Joseph S. Harris were appointed receivers of the Central Railroad Company of New Jersey, and the receivers of the Philadelphia and Reading Railroad Company surrendered possession

to them upon the first of January, 1887. Notice of the application having been given to the Navigation Company, a bill was filed by that company asking that it might be decreed that the lease had terminated or else to declare its terms. Of course this action was only, or mainly, taken by way of precaution; and after protracted negotiations, the agreement of June 28th, 1887, was executed, whereby it was agreed that the Lehigh and Susquehanna Railroad should thereafter be held by the Central Railroad, under the terms of the original deed of March 31st, 1871, as modified by that of May 29th, 1883, and by the agreement then made, and all covenants on the part of the Reading Company in the deed of 1883 were to be taken as made and assumed by the Central Railroad Company of New Jersey, except as therein specified. As to the Lehigh and Wilkes-Barre Coal Company, it was agreed that the development should be caused to proceed so 905
that the lands should produce at least five and one-half per cent of the total production of the anthracite field after December 31st, 1896, so long as possible to do so. The Wilkes-Barre and Scranton road was included, and it was also agreed, that if required, the navigation company should take possession and operate the Lehigh and Susquehanna Railroad under the terms of the contracts; and in consideration of the payment of the bonds of the gold loan, assumed by the Central Railroad Company of New Jersey, the navigation company agreed to pay the balance due on construction account and thereafter repay such expenditures in twelve months from the end of the year in which they should have been made.

In February, 1892, the Reading Railroad Company took a lease of the properties of the Lehigh Valley Railroad and of the Central Railroad Company of New Jersey. In order to avoid the legal objections to a lease to itself directly, the lease of the Central Railroad was taken by the Port Reading Railroad Company. It was agreed by all counsel concerned that the Navigation Company should not itself become a party to the lease of the Central Railroad Company, as its railroad was clearly parallel to that of the Lehigh Valley Company and manifestly within the prohibition of the constitution, and the necessary safeguards to prevent the diversion of business and to insure the reasonable development of the traffic had, therefore, to be inserted in the stipulations made with the Central Railroad Company of New Jersey, under its contract with the Port Reading Company. 906

The lease of the Central Railroad to the Port Reading Railroad Company, dated February 12th, 1892, and the tripartite agreement of even date therewith, between the Central Railroad Company of New Jersey, the Philadelphia and Reading Railroad Company, and the Port Reading Railroad Company are no longer in force, as the whole arrangement was declared void by the chancellor of New Jersey; but these contracts of 1892 are of inestimable importance to this company at this time, in view of the fact that the Reading Company is now the owner of a majority of the capital stock of the Central Railroad Company of New Jersey, and under the same temptation to subordinate the business of the Lehigh and Susquehanna Railroad to its own interests, as might have influenced that company when in possession of the property under the lease of 1883 or of 1892, and the lease and tripartite agreement of 1892 contain a clear and satisfactory statement of the manner in which the Lehigh and Susquehanna Railroad should be operated, which statement was then conceded by the

Central Railroad and the Philadelphia and Reading Railroad Companies to be a fair and equitable expression of the respective rights and duties of the parties then and now in interest.

The ninth article of the lease bound the Port Reading Company to perform all the obligations of the Central Company under the provisions of the agreements of 1871, 1883, and 1887, which were thereby
907 reaffirmed, and it was further declared that "the interpretations and usages at present in force are to be accepted as settling and determining the constructions thereof." This last clause is of great importance and value, as it may safely be relied upon to prevent the reopening of any question which has been heretofore settled by express agreement or usage. The tenth section virtually increased the minimum to $1,800,000, by providing that the total gross receipts should not be less than $5,100,000, and further providing that after December 1st, 1895, the total should not be less than $5,750,000. These provisions are no longer in force.

There then followed, in the eleventh article, very careful provisions as to the way in which the traffic should be routed, effectually guarding against the diversion of business, and for the maintenance of a sufficient passenger service so as to prevent discrimination in favor of the Lehigh Valley Railroad. The tripartite agreement contained more detailed provisions in reference to the routing of the traffic, so as to secure at least all the traffic then tributary to or passing over said lines, with a further obligation to augment the same in proportion to the general increase of traffic in the territory occupied. A further clause that the Port Reading Company should procure all business to be exchanged between points on the Reading system of railroads and its connections and the Central system and its connections to be routed by the most direct lines formed or that could be
908 formed out of existing members of these systems as then (now) constructed, can not now be insisted upon, but is still valuable as showing what was thought reasonable at that time.

Simultaneously with the delivery of the lease and tripartite agreement this company and the Central Company entered into a supplemental agreement to the effect that the execution of the lease to the Port Reading should not affect the obligations of the Central Company to perform all the covenants in the agreements of 1871, 1883, and 1887, nor the right of the Lehigh Company to object to any future transfer or assignment of its rights relative to the Lehigh and Susquehanna Railroad, and agreeing that in case the Central Company should desire the Lehigh and Susquehanna Railroad to be operated by the Lehigh Company, it would do so as stipulated in the agreement of 1887. Under the same date, an agreement was entered into between this company and the Lehigh and Wilkes-Barre Coal Company, renewing and enlarging the agreement with the Wilkes-Barre Coal and Iron Company of 1870, and binding the coal to be mined and transported from the lands of the Lehigh and Wilkes-Barre Coal Company and of the Alliance Coal Mining Company to the Lehigh and Susquehanna Railroad, it being the understanding at that time that the Lehigh and Wilkes-Barre Coal Company would acquire a half interest in the Alliance Coal Mining Company. The Central Railroad Company was also a party to this agreement, and it is declared that the true intent and meaning of this agreement is to continue the policy heretofore pursued by the parties hereto as

evidenced by the existing agreements, and to cement their interests 909
indissolubly, so that they may mutually protect and defend each other and may successfully resist any effort to sever them.

It may be said, with reasonable confidence, that the result of these successive agreements is to secure to the Lehigh and Susquehanna Railroad the transportation of all the coal which can be mined by the Lehigh and Wilkes-Barre Coal Company, the Alliance Coal Mining Company, or the Central Railroad Company of New Jersey, from lands owned or controlled by them or any of them; and to insure the development of the coal properties of these companies *pari passu* with the remainder of the anthracite field until the product shall be equal to at least five and one-half per cent. of the total output. It is also clear that the Reading Company, as the owner of a majority of the capital stock of the Central Railroad Company, is under all the obligations of a managing partner to develop what may be called the firm business to the greatest possible advantage, and that any attempt to divert the business or to subordinate the interests of the Lehigh and Susquehanna Railroad to its other lines could be successfully enjoined. Fortunately, the full measure of duty in these respects is clearly declared and defined in the successive agreements to which reference has been made, and there is no reason to apprehend that under the present management of the Reading Company there will be any disposition to evade or ignore the obligations devolving upon it. In fact, so soon as the maximum shall have been reached, it will be to the interest of the Reading Company to 910
route all the business over the Nesquehoning Branch of the Lehigh and Susquehanna Road, which it can transport more cheaply than by the way of Reading. It is reasonable, therefore, to anticipate that so soon as the maximum shall have been reached there will be such an addition to the business of the railroad as to make that figure secure, and it will probably be unnecessary to rely upon the specific clauses of any agreement other than that relating to the maximum rental. This is fixed by the contract of 1883 at $2,043,000, together with a further sum in each year equal to seven per cent. upon the advances for rights of way and construction.

It has been suggested that this would be held to mean seven per cent upon the advances from the time they were made, but the clause in effect makes an addition to the maximum rental to be paid in any calendar year. It is not seven per cent interest, but a sum equal to seven per cent upon the amount charged upon the books of this company. Under the original lease it was the apparent understanding of the parties that while the lessee assumed the burden of maintenance the lessor was obliged to provide for additions which presumably would increase the earning power and give a return in the one-third share of the gross receipts. When the maximum rental was reached the lessor would no longer get the benefit of disbursements made on account of construction in its share of the rental to which it was entitled, and hence, as a substitute, it was provided that 911
in any year in which the one-third should equal the maximum sum named the lessor should be entitled to have, not interest upon his advances, but a further sum equal to seven per cent upon the amounts charged upon its books. Until it has received this amount the lessor continues to get its one-third of the gross receipts, and thereby gets

compensation for the expenditures it has made in the permanent improvement of the railroad property.

It is to be noted also that the obligation to pay the seven per cent does not arise until the maximum has been reached, and if it never should be reached the Central Company would never be under any liability on that account. This confirms the view that it is only a liability equal to seven per cent in the particular year in which the one-third of the gross earnings exceeds $2,043,000.

(Sd.) SAML. DICKSON.

*935 Mr. GORDON. I would like to make a call on the record for the following agreements, which are referred to in the foregoing statement, to be inserted in the record at this point and furnished by counsel for the defendants:

1. The lease of the Central Railroad Company of New Jersey to the Port Reading Railroad, dated February 12, 1892. (See p. 438.)

2. The tripartite agreement of the same date between the Central Railroad Company of New Jersey, the Philadelphia & Reading Railroad Company, and the Port Reading Railroad Company. (See p. 453.)

3. The supplemental agreement of the same date, entered into simultaneously with the delivery of the foregoing lease and tripartite agreement, between the Central Railroad Company of New Jersey and the Lehigh Coal & Navigation Company. (See p. 462.)

4. The agreement of the same date between the Lehigh Coal & Navigation Company and the Lehigh & Wilkes-Barre Coal Company, renewing and enlarging the agreement between the Wilkes-Barre Coal & Iron Company of 1870 and binding the coal to be mined from the lands of the Lehigh & Wilkes-Barre Coal Company and the Alliance Coal Company to the Lehigh & Susquehanna Railroad. (See p. 464.)

935½ The agreement of 1870, referred to in agreement No. 4, just called for, between the Lehigh Coal & Navigation Company and the Wilkes-Barre Coal & Iron Company. (See p. 466.)

936 Following are copies of the leases and agreements called for by Mr. Gordon and furnished by counsel for defendants:

LEASE.

The Central Railroad Company of New Jersey to the Port Reading Railroad Company, dated February 12th, 1892.

Whereas, The Central Railroad Company of New Jersey, and The Port Reading Railroad Company, in pursuance of the Laws of the State of New Jersey, and of every other power and authority them in that respect enabling, have agreed that the railroads of the said The Central Railroad Company of New Jersey shall be leased to the Port Reading Railroad Company, and shall be run, used and operated by the latter company, upon the terms and conditions hereinafter set forth:

* So numbered in original.

Now this Indenture, made this 12th day of February, 1892, by and between the Central Railroad Company of New Jersey, hereinafter called the Central Company, and the Port Reading Railroad Company, hereinafter called the Port Reading Company, witnesseth:

That for and in consideration of the covenants and agreements of the Port Reading Company hereinafter contained, and of the sum of one dollar ($1) to the Central Company in hand paid by the Port Reading Company, the receipt whereof is hereby acknowledged, the Central Company doth hereby let and demise to the Port Reading Company, its successors and assigns, for the term of nine hundred and ninety-nine (999) years, the entire railroad of the Central Company, as the same is now located and constructed, or as the same may be hereafter located and constructed, in pursuance of any and every lawful authority now existing, or which may hereafter exist; together with all its right to construct, maintain and operate the following described railroads, whether such right is acquired by virtue of any lease, contract or otherwise, viz.: 937

The Central Railroad of New Jersey, including its following branches:

The Newark and New York Branch,
The Manufacturers' Branch,
The Elizabethport and Perth Amboy Branch,
The Elizabethport Loop,
The Bayway Branch,
The Tremly Branch,
The Newark and Elizabeth Branch,
The Constable's Hook Branch,
The South Branch,
The High Bridge Branch,
The Longwood Valley Branch, and
The Lake Hopatcong Branch;
The Allentown Terminal Railway (subject to the provisions of all existing agreements respecting the same);
The Buena Vista Railroad;
The Carteret and Sewaren Railroad;
The Carteret Extension Railroad; 938
The Cumberland and Maurice River Railroad;
The Cumberland and Maurice River Extension Railroad;
The Dover and Rockaway Railroad;
The Elizabeth Extension Railroad;
The Freehold and Atlantic Highlands Railroad;
The Hibernia Mine Railroad;
The Hudson and Communipaw Railroad;
The Lafayette Railroad;
The Lehigh and Lackawanna Railroad;
The Lehigh and Susquehanna Railroad;
The Manufacturers' Extension Railroad;
The Nanticoke Railroad;
The Navesink Railroad;
The Nesquehoning Valley Railroad;
The New Jersey Southern Railway, including the former Long Branch and Sea Shore Railroad;
The New York and Long Branch Railroad;
The Ogden Mine Railroad;

The Passaic River Extension Railroad;
The Toms River Railroad;
The Toms River and Waretown Railroad;
The Trescow Railroad;
The Union Coal Company's Railroad;
The Vineland Railroad;
The West End Railroad;
939 The Wilkesbarre and Scranton Railroad; and
The Wind Gap and Delaware Railroad;

subject as to any of the above-named railroads which are leased, to the payment of the rentals thereof, and subject as respects the New York and Long Branch Railroad, to the agreement between The Central Railroad Company of New Jersey, The New York and Long Branch Railroad Company, The New Jersey Southern Railway Company, and The Pennsylvania Railroad Company, dated January 2, 1888, and the payment of rental therein provided.

Together with all branches, laterals, extensions, sidings, turnouts, tracks, bridges, viaducts, culverts, rights of way, water rights and privileges, all lands, shops, machinery, fixtures, depots, stations, water stations, houses, buildings, structures, improvements, tenements and hereditaments of whatever kind or description and wherever situate, appertaining to the operation, maintenance and renewal of the said railroads which are now held, leased or owned by the Central Company, or which may at any time hereafter during the term of this demise be acquired by the Central Company, for railroad purposes, by the request of the Port Reading Company, pursuant to the betterment clause of this lease: And together with all the ferries and rights of ferriage now belonging to or which may hereafter be acquired for the purposes aforesaid by the Central Company; Also all the engines (stationary and locomotive), cars, tenders, trucks and other rolling stock, tools, implements, machines and personal property of every
940 kind and description in use or intended or adapted for use upon or about the railroads and premises demised or the business thereof, including all ferryboats, steamboats, tugs, floats, barges and other vessels belonging to the Central Company; it being the intention and agreement of the parties hereto that all cars and other rolling stock now used by or in possession of the Central Company under the terms of any car trust, shall, when and so soon as they shall become the property of the Central Company, and to the extent of the interest of the Central Company therein, be included in the terms of this lease. And all rights, benefits and privileges of every nature whatsoever now enjoyed or which may hereafter be enjoyed by the Central Company relating and appertaining to the demised property.

Also all the rights, powers, franchises (other than the franchise of being a corporation) and privileges which may now or at any time hereafter during the aforesaid term be lawfully exercised or enjoyed in or about the use, management, maintenance, renewal, extension, alteration or improvement of the railroads, premises or appurtenances above demised: Together with all rights now enjoyed by the Central Company to the lines of telegraph now existing, or as the same may hereafter exist along the line of said railroads or their branches, or any extension thereof.

Excepting and reserving, nevertheless, out of the demised premises the building and its contents, situated at the corner of Liberty and

West streets, in the City of New York, known as the "Central Build- 941
ing." Also excepting all other real estate owned or held by the said Central Company, which is not adjacent to said railroads, or, if adjacent, is not used or required for the purposes of the business of the demised railroads and their appurtenances; provided, moreover, that as to all real estate included in this lease acquired, but not presently used for railroad purposes, the same though forming part of the demised premises, shall remain in the possession of the Central Company, and the income of any parcels thereof which may be leased or may be otherwise income producing remaining after payment of taxes on such parcels, shall belong to the Central Company until so required, but that when so required, possession thereof shall be delivered over to the Port Reading Company, who shall thereafter use and enjoy the same under the provisions of this lease. No such property shall be hereafter leased by the Central Company for a longer term than three years at any one time without the previous consent of the Port Reading Company, and the obligation of the Central Company to surrender possession of the property shall be subject to the terms of any lease relating thereto in force when such property is so required.

A schedule of the real estate used or required for railroad purposes and included in this lease shall be made and signed as soon as may be practicable.

To have and to hold the premises thus leased and demised unto 942
the Port Reading Company, its successors and assigns, for the full term of nine hundred and ninety-nine years from the date hereof, so far as the same are owned by the Central Company, and so far as the same are held under lease by the Central Company for the said full term of nine hundred and ninety-nine (999) years from the date hereof, or, with reference to each leased estate so sub-let, for the period (within the limit of the term hereof) for which the said Central Company shall be entitled to sub-let the same.

And in consideration of the premises, the parties hereto do hereby covenant and agree as follows, each party covenanting for itself, its successors and assigns, with the other, its successors and assigns:

First. That the Port Reading Company shall, and will, pay to the Central Company, as is hereinafter specified, during the said term, as rent for the premises hereby demised, the following sums:

(a.) Such sums as will enable the Central Company to pay and discharge all interest, dividends, rentals, guarantees and all other charges which it is now or may at any time hereafter be obliged in any manner to pay. A schedule of the present fixed charges, other than taxes, is to be made, and when duly certified and signed, shall form part of this agreement.

Payment of the said various sums, based upon estimates to be 943
made by the Central Company at the beginning of each year, shall be made in equal monthly installments during the said term on the first day of each month, and the first payment for the year 1892 shall be made as of the first day of February, 1892.

And the Central Company hereby expressly covenants to apply the above said sums to the payment of the said interest, dividends, rentals guarantees and other charges accruing from time to time upon the stocks, bonds, leases, guarantees and obligations of the Central Company which are hereinbefore referred to.

Provided, however, and it is hereby expressly understood and agreed that if a reduction or an increase in the rate of interest upon any of the outstanding obligations hereinabove mentioned shall at any time be effected, whether by extension of the time of payment of the principal thereof, or by an exchange of existing bonds for bonds bearing a less or greater rate of interest, or otherwise howsoever, or if any reduction or increase shall be effected in the rental of any leased roads, or in any other charges now payable by the Central Company, then the sums payable by the Port Reading Company as above mentioned shall be reduced or increased by an amount equal to the reduction or increase in the said interest, rentals or other charges.

944 Provided, further, however, that if at any time hereafter any part of the issue of convertible Debenture Bonds shall be converted into stock, such stock thereafter shall be treated as though in existence at the time of making this lease, and the payments to be made shall be changed accordingly.

Provided, nevertheless, and it is hereby further expressly understood and agreed, that no reduction in the sum applicable to the payment of interest upon the five million ($5,000,000) dollars of bonds issued by the American Dock and Improvement Company shall take place in consequence of the payment of any part of the principal of the said bonds, from the proceeds of the sale of property of the said Dock Company, which may be applied thereto, so long as the annual receipts of the said Dock and Improvement Company shall be insufficient to pay and discharge all taxes, expenses and other charges payable by it; but that the benefit of any such reduction shall enure to the said Dock and Improvement Company so long as and to the extent that it shall be needed for the discharge of taxes, expenses and other charges which cannot be liquidated by its receipts.

(b) And a further sum in each and every year which shall be equal to seven per centum per annum upon the present outstanding capital stock of the Central Company, including as such outstanding stock any stock hereafter issued under the obligations of its convertible Debenture Bonds hereinbefore mentioned, which sum shall be paid in equal monthly installments on the 1st day of each month of each and every year during said term, commencing as of the 1st day
945 of February, 1892; it being further understood and agreed that any interest which may hereafter be paid by the Lehigh and Wilkes Barre Coal Company in any year for interest due in such year upon its six million one hundred and sixteen thousand ($6,116,000) dollars Consolidated Mortgage Bonds deposited with the Trustee of the General Mortgage of the Central Company, or any bonds issued in payment thereof or in substitution therefor, shall be credited to the Port Reading Company as part of the earnings of the demised premises for such year.

(c) And a further sum, equal to 50 per centum of the surplus earnings over the 7 per centum above stipulated, which shall have accrued to the Port Reading Company during each calendar year of the term of this lease from all the trade, traffic, business and income of the demised premises. Provided, however, that no amount shall be payable to the Central Company as its share of such surplus earnings in excess of a sum equal to three per centum additional upon the said outstanding capital stock of the Central Company,

including as such outstanding stock any stock hereafter issued under the obligations of its convertible Debenture Bonds hereinbefore mentioned.

Payment of the said last-mentioned amount shall be made in one annual payment at the end of each year during said term, the first payment to be made on the first day of January, 1893, and annually thereafter on each first day of January. But in case it shall not be practicable to exactly determine said amount the same shall be 946
estimated and the estimated amount shall be paid, and the exact amount thereafter adjusted and paid as soon as the same shall be ascertained.

And provided, further, and it is hereby further expressly covenanted and agreed that the words "surplus earnings" shall be held to signify the sum remaining of the total gross receipts, earnings and income of the said demised premises during each fiscal year ending December 31st, after deducting therefrom all expenses of maintaining, operating, renewing, replacing and repairing the said demised premises, which shall be necessary for the safe, proper and economical operation of the same, and also taxes and the fixed charges named in paragraph *a* of this article. In computing said expenses the same rules which have been applied between expense and capital accounts by the Central Company for the years 1890 and 1891 shall be observed as nearly as may be possible.

Second. That the Port Reading Company shall and will, during the continuance of the term hereby demised, assume the payment of, and punctually and faithfully pay all taxes and assessments upon the capital stock of the Central Company, upon the yearly payments herein agreed to be made by the Port Reading Company to the Central Company, and upon the dividends declared and paid by the Central Company to its stockholders out of the said yearly rent, for the payment or collection of which taxes or assessments the Central Company would be otherwise liable or accountable under any lawful 947
authority whatever.

Provided, however, that nothing in this covenant contained shall require the Port Reading Company to pay for any one year a greater amount of taxes or assessments on the capital stock of the Central Company than the amount that would be chargeable or assessable for such year upon the present outstanding capital stock of the Central Company together with so many shares as may be issued at not less than par by the Central Company in accordance with the terms of this agreement, whether for improvements or pursuant to the obligations of its Convertible Debenture Bonds, nor any greater amount of taxes or assessments on dividends than the amount that would be chargeable or assessable on a dividend or dividends at the rate which may be payable out of the rent hereinbefore provided;

And provided further, that nothing herein contained shall be construed as rendering the Port Reading Company liable or responsible for taxes or assessments on any dividend or part of dividend paid by the Central Company out of any other funds than the aforesaid yearly rent, and any dividend or part of dividend for the tax on which the Port Reading shall not be liable or responsible as aforesaid, shall be disregarded in computing the amount of tax payable by the Port Reading Company.

Third. That the Port Reading Company shall and will punctually and faithfully pay all taxes, charges, levies, claims, liens, and assessments of any and every kind which, during the continuance of the
948 term hereby demised shall, in pursuance of any lawful authority, be assessed or imposed on the demised premises, or any part thereof, or upon the business there carried on, or the receipts, gross or net, therefrom or upon the franchises of the said Central Company; and also any taxes, charges or assessments in respect to either the principal or interest of bonds or obligations of the Central Company, the interest of which shall be paid out of the rent aforesaid, which, in pursuance of any lawful authority, the Central Company shall in itself be required to pay without recourse to the parties to whom such interest is paid, whether such recourse shall not be allowed by the provisions of the statute, ordinance or enactment imposing or authorizing such tax, charge or assessments, or shall have been waived or released by any now existing agreement of the Central Company in respect thereto.

And all other payments required to be made by the Central Company during the term of this indenture, and not herein otherwise specially provided for, shall be assumed and discharged by the Port Reading Company, as if the Port Reading Company were primarily liable for the same.

Provided, however, that the Central Company shall have the option at any time hereafter to require the Port Reading Company to pay to it an amount equal to the taxes and charges assumed by the Port Reading Company in this and the immediately preceding article of this agreement. Such amounts shall be payable at the date on which such taxes and charges are due. The Central Company hereby covenants and agrees to apply such amount to the payment
949 of said taxes and charges. Nothing herein contained, however, shall prevent the Port Reading Company from contesting any illegal taxes.

Fourth. That the Port Reading Company shall and will during the continuance of the hereby demised term, keep and maintain the said demised railroads and appurtenances, buildings, structures and fixtures in at least as good order and repair as they now are, and continue a line of insurance thereon not less than the amount now in force, and distributed in like proportion over different parts thereof, until and unless the same shall be reduced by mutual consent; keep in public use, manage and efficiently operate the said railroads, from time to time and at all times indemnify and save harmless the said Central Company from all liabilities, damages, claims and suits by reason of anything done or omitted by the Port Reading Company in the premises, and, at the expiration or other determination of the hereby demised term, surrender the said railroad and premises in at least the same good order and condition as they now are.

Fifth. That the Port Reading Company shall and will, during the continuance of the term hereby created, provide and maintain, and from time to time cause to be provided, under the betterment clause of this lease, as the same may be required, station and terminal facilities for the receipt, shipment and handling of all traffic over the lines of the Central Company, and that it shall and will keep and maintain in use on the railroads hereby demised an adequate equipment of
950 rolling stock, ferryboats and other floating equipment, machinery, tools and other equipment adapted for railroad business and sufficient for the growth of the business of the Central System, and that the

rolling stock, ferryboats and other floating equipment, machinery, tools and other equipment in use on the said railroad shall at all times be equal in amount and value to the said equipment hereby leased, and any additions thereto paid for as betterments by the Central Company; that is to say, that there shall be at all times in use on the Central Railroad and marked and designated as belonging thereto so as to identify and distinguish the same as the property of the Central Company, no less than the same number of locomotives, and no less than the same number of passenger cars, and no less than the same number of ferryboats and other floating equipment, machinery, tools and other equipment as are now in use upon the same, adding thereto such equipment as may be paid for hereafter by the Central Company as betterments, and all of the said equipment shall always be kept up to standard types, and shall always be fully adapted to the use of first-class traffic, and that there shall be at all times on said railroads the same tonnage of freight and coal cars as is now in use, and any additions thereto paid for as betterments by the Central Company of the then standard type and fully adapted for the transaction of business by the most approved methods; and that upon the expiration or sooner determination of the term of this lease, the Central Company shall be put in possession of such locomotives, 951
passenger cars, freight cars, ferryboats and other floating equipment, machinery, tools and other equipment as above provided, all of which shall be at least of equal value to those hereby leased, including any additions thereto. There shall be an annual inspection of the said rolling stock and equipment by an expert to be appointed by the Central Company. For the better securing to the Central Company of the full performance of this covenant, an inventory of the said rolling stock and other personal property leased shall be forthwith made, and the said rolling stock and personal property shall be appraised at its fair market value by three appraisers, one to be selected by each of the parties hereto, and the third by the two thus selected, and the said inventory and appraisement shall be identified by the respective signatures of the Presidents of the parties hereto, and shall be considered part of this agreement.

Sixth. The Port Reading Company shall and will during the continuance of the hereby demised term keep up and maintain the present carshops, repair shops and works and plant of similar character, of every description, or such other shops, works and plant as may with the consent of the Central Company be substituted therefor, including all tools, machinery, fixtures and appliances of any kind whatsoever, therein and thereabout, in the condition the same now are, and for the better securing to the Central Company the full performance 952
of this covenant, an inventory of the said tools, machinery, fixtures and appliances shall be forthwith made, together with all tools and appliances used on or about the demised premises, and the same shall be appraised at their fair market value by three appraisers, one to be selected by each of the parties hereto and the third by the two thus selected, and the said inventory and appraisement shall be attested by the signatures of the said appraisers and be considered part of this agreement, and that, upon the expiration or sooner determination of the term of this lease, the Central Company shall be put in possession of personal property of similar character and of value equal to that herein leased to the Port Reading Company.

Seventh. All additions, extensions, betterments and improvements to, of or upon the premises hereby demised, or their appurtenances, including any new rolling stock or floating or other equipment, and also including any new lines of railroad connecting therewith, whether constructed under the charters of the parties hereto or otherwise, shall be made as follows:

1. The Central Company shall have the prior right at its option to provide or procure to be provided the same or any part thereof; and to enable it to exercise such prior right, the Port Reading Company shall in all cases request in writing the particular addition, extension, betterment or improvement desired.

953 2. Should the Central Company, after receiving such request, refuse or neglect for a period of thirty days to take necessary action thereon, the Port Reading Company may otherwise provide or procure such additions, extensions, betterments or improvements.

The Central Company shall pay the cost of additions, extensions, betterments or improvements provided or procured by it upon the request of the Port Reading Company, and to pay therefor, may at its option issue bonds bearing interest at a rate not exceeding five per centum per annum, or shares of its capital stock, and thereafter the rent payable by the Port Reading Company to the Central Company shall be increased by a sum equal to five per centum per annum upon the cost of such additions, extensions or improvements.

Such additions, extensions, betterments and improvements provided or procured by the Central Company upon the request of the Port Reading Company, shall form part of the demised premises, subject to all the covenants of this lease.

Provided, however, that nothing herein contained shall prevent the Central Company from providing or procuring any such additions, extensions, betterments or improvements, without any request from the Port Reading Company, and from receiving the income thereof; subject, however, to the right of the Port Reading Company, within one year from the completion thereof, to request that they be made part of the demised premises, after which request the rental aforesaid shall be increased by a sum equal to five per centum upon the cost thereof, with interest at the rate of five per cent from the 954 time of completion until such request is made by the Port Reading Company.

This clause shall be designated and referred to as the "betterment clause of the lease."

Eighth. The Port Reading Company shall keep full, true and accurate accounts, and make reports and statements thereof, to the satisfaction of the Central Company, of all the business, receipts and revenues derived from the conduct of the operations of the said demised premises, which together with the data upon which the same are based and copies of all contracts relating thereto shall at all times be furnished to the Central Company, and all records and papers relating to the maintaining and operating of the demised premises shall be open to the inspection of the proper officer or officers of the Central Company, duly appointed for that purpose, who shall have liberty to make extracts from the same for the information of the officers and directors of the Central Company. Provided, and it is hereby expressly understood, covenanted and agreed that the gross receipts and charges properly applicable to the premises hereby

demised, as between the parties hereto, or between the Central Company and any other railroad companies whose lines may connect with the railroads hereby demised, and between which traffic may be interchanged, shall be calculated upon the basis of division which now prevails in respect to traffic now interchanged between the lines of the said parties, or between the same or either of them and other connecting lines, including any allowances for arbitraries and for 955
terminal charges, and that such basis shall not be changed at any time without the mutual agreement of the parties hereto, in writing, and if any case shall arise at any time in which the basis of division of receipts and charges now in force shall not be strictly applicable, the rules and principles upon which the proper parts of such receipts and charges are now applied to the premises hereby demised shall be followed as nearly as may be, until the parties hereto shall have agreed upon and fixed the basis of such new case or cases.

Ninth. That the Port Reading Company shall and will assume and well and faithfully perform all the obligations of the Central Company under all contracts made by it, so far as they relate to the demised premises, or any part thereof, or the traffic connected therewith, including all contracts for new equipment made previous to the date hereof, and all contracts relating to the Navesink Railroad; and in particular it is distinctly understood and agreed that the provisions of the agreements of March 31, 1871, May 29, 1883, and June 28, 1887, and all other existing agreements with The Lehigh Coal and Navigation Company, or in which it may have an interest, relating to the use and operation of the Lehigh and Susquehanna Railroad and branches, as herein defined, or to any other matter connected therewith, except as now otherwise provided, be and the same are hereby reaffirmed, accepted and assumed as fully as if herein repeated 956
at length, and the interpretations and usages at present in force are to be accepted as settling and determining the construction thereof.

Tenth. That the Port Reading Company will cause or procure business to be transported over the Lehigh and Susquehanna Railroad and branches, so that the gross receipts thereof shall never in any year, after December 31, 1891, be less than five million four hundred thousand ($5,400,000) dollars, and so that after December 31, 1895, they shall never be less in any year than five million seven hundred and fifty thousand ($5,750,000) dollars, the maximum rental remaining the same as fixed in the agreement of May 29, 1883, and June 28, 1887, and the agreement of July 10, 1889, relating to the Allentown Terminal Railroad, except that there shall be added to the maximum rental five per centum upon the cost of the Lehigh and Lackawanna and the Wind Gap and Delaware Railroads, it being understood and agreed that the term "The Lehigh and Susquehanna Railroad and Branches" shall from January 1, 1892, for all purposes of this agreement, include all the railroads recited in the agreement of March 31, 1871, and the extensions or branches of the railroads therein recited, and also the Allentown Terminal Railroad, the Lehigh and Lackawanna Railroad, and the Wind Gap and Delaware Railroad, and that all additional railroads or branches that may be required within the territory contiguous to the Lehigh and Susquehanna Railroad and branches shall be built under the provisions of the first and second of the mutual covenants of the agreement of March 31, 1871.

957 Eleventh. That the Port Reading Company shall not and will not divert or permit or cause to be diverted from the transportation lines or terminals comprising the Central system its present traffic or any traffic which would naturally go to or towards its destination by or over the said system or any part thereof; and covenants and agrees that the tonnage mileage of all classes of traffic over the rail and water lines of the Central system shall be fostered and increased (by affording proper facilities and the making of reasonable and proper charges for transportation and otherwise), in such natural and proper future growth as shall be due to the location and resources of the said system. And the Port Reading Company shall at all times and from time to time during the term, give and extend to the individual operators and miners of coal along the lines of the Central Company, all due facilities for the shipping and marketing of the coal mined by the said operators and miners over the Central system and its terminals, and the Port Reading Company shall not do anything in discrimination against the said operators and miners. That the Port Reading Company will furnish sufficient cars and requisite facilities for transportation as needed for the shipment of anthracite coal from the mines that are or may hereafter be naturally tributary to the Central
958 system, to an amount equal in proportion of the total production of anthracite coal in the whole anthracite region to the proportion shipped on the said system in the year ending December 31, 1891, and for the shipment from the mines operated by the Lehigh and Wilkes Barre Coal Company of an amount not less in any one year than the tonnage mined by said Coal Company in the year 1891.

And that the rates of transportation charges upon the coal mined from said lands shall be as low as are at any time charged from any adjacent lands by any route, and relatively as low as are from time to time charged by the Reading Company or Port Reading Company from the Schuylkill region.

And that the suburban passenger and freight service on the lines of the Central Company shall not be diminished without the consent of the Central Company, and that the passenger service on the Lehigh and Susquehanna Railroad and branches shall not be diminished without consent of the Central Company, more than in proportion to any reduction made in the passenger service in the whole region belonging to the Lehigh Valley Railroad and branches and the Lehigh and Susquehanna Railroad and branches, and that a sufficient passenger service shall be maintained on all lines of the Central Company for the conduct of the business and the accommodation of the public.

And in case of difference of opinion as to the character of service of the Lehigh and Susquehanna Railroad and its branches the question shall be referred to arbitration, to which the Lehigh Coal and Navi-
959 gation Company may be a party, in the manner provided for in the agreement of March 31, 1871, and its supplements.

Twelfth. That the Port Reading Company shall, during the term hereby demised, upon the request of the Central Company, furnish the President, Directors, officers and employees, for the time being, of the Central Company, with annual passes or tickets, entitling them to free passage in the passenger trains of the Port Reading Company over the hereby demised railroads, together with passes to such persons as are entitled thereto under the laws of the State of New Jersey and to such other persons as may be legally entitled thereto.

Thirteenth. That the Port Reading Company, its successors and assigns, keeping and performing the covenants herein contained, on its and their part to be kept and performed, shall and may at all times, and from time to time, peaceably and quietly have, hold, use and enjoy the demised premises and every part and parcel thereof, with the appurtenances, without any manner of let, suit, trouble or hindrance from the Central Company, its successors and assigns; and the Central Company shall and will at any time hereafter execute and deliver such further assurances as may be reasonably required for fully effectuating the objects and purposes of this indenture, and the more fully securing unto the Port Reading Company all the rights and privileges hereinbefore mentioned and granted, or intended so to be.

Fourteenth. That the Central Company shall and will, during the 960
term hereby demised, maintain its corporate existence and organization; and at all times, and from time to time during the said term, when requested by the Port Reading Company, its successors or assigns, shall and will put in force and exercise each and every corporate power, and do each and every corporate act which the Central Company might now or may at any time hereafter lawfully put in force or exercise to enable the Port Reading Company to enjoy, avail itself of, and exercise every right, franchise, and privilege in respect of the use, management, maintenance, renewal, extension, alteration, or improvement of the premises hereby demised, or intended so to be, or the business to be there carried on. All the stocks owned by the Central Company of corporations the railroads of which are included in this lease, shall remain the property of the Central Company; but the Central Company shall, upon the request of the Port Reading Company, procure any action to be taken by such corporation which may be necessary to secure to the Port Reading Company, subject to all the provisions of this lease, the same right to construct, maintain and operate the same as is now possessed by the Central Company.

The Central Company may with the consent of the Port Reading Company, but not otherwise, sell and dispose of any of the said stock.

The Port Reading Company agree to indemnify and save harmless 961
the Central Company, and any companies the railroads of which are included in this lease, against all loss, damage or liability for the exercise of corporate powers, or performance of corporate acts, when exercised or done at the request of the Port Reading Company.

Fifteenth. The Central Company hereby covenants that the premises hereby demised are absolutely free and clear from any and every charge, lien, or encumbrance whatever, except the mortgages and charges hereinbefore referred to, and that the Central Company shall and will fully pay and discharge the principal of the bonds secured by the said mortgages, when and as the same shall become due and payable, or procure the same, from time to time, during the time of this lease, to be converted, extended, renewed or replaced by other bonds or securities, bearing interest at the lowest rate attainable.

Sixteenth. That the Central Company shall from time to time and at all times give immediate notice to the Port Reading Company of any claim presented or suit brought against the Central Company by which the Port Reading Company may be involved in any liability

whatever, to permit the Port Reading Company to make, in the name and on behalf of the Central Company, but at the cost and expense of the Port Reading Company, any legal defense that can be made to such claim or suit.

962 The said Port Reading Company shall defend all actions of every kind relating to the demised premises that may be depending against the said Central Company or that may hereafter be brought against said Central Company during the said term, and shall pay all amounts that shall or may be therein recovered against the said Central Company, and shall also indemnify and save harmless the said Central Company of and from all causes of action, legal and equitable, and claims and demands that have arisen, or shall or may arise against it, or which shall or may arise against the said Port Reading Company, in the exercise of its powers under this lease and during the continuance thereof, and all payments so made by the Port Reading Company shall be charged as part of its operating expenses hereunder in the computation of surplus net earnings.

Seventeenth. That the Central Company shall and will cause the American Dock and Improvement Company (a corporation of the State of New Jersey, the whole capital stock of which is owned by the Central Company), upon the request of the Port Reading Company, whenever in the opinion of its officers it shall be desirable to enlarge the area of the existing terminal property on the Hudson River and the waters of New York Bay, to lease, at a nominal rent in addition to taxes, such part or parts of the said Dock and Improvement Company's property not now leased to other parties or hereafter sold or leased with the consent of the Port Reading Company, as shall be desig-
963 nated by the Port Reading Company, but only for the purposes of traffic passing to and from the same over railroads of the Central system under the tripartite contract of even date herewith or other existing traffic agreements, and for the term of this lease, and thereupon to put the Port Reading Company immediately in possession of the same as part of the demised premises; and in order to secure the performance of this covenant, the said Central Company hereby covenants and agrees that it will not at any time sell any of the capital stock of the said American Dock and Improvement Company, or otherwise relinquish or endanger its control of that Company; and that it shall also by means of such control, prevent the said American Dock and Improvement Company from making any sale of any part of its said property that may be reasonably required for railroad purposes.

Eighteenth. That the Central Company will make no further issues of stock, except under the obligations of the convertible Debenture Bonds, nor incur any further indebtedness whatsoever, which issues of stock or indebtedness shall subject the Port Reading Company to any additional burden, excepting under the provisions of this instrument, without the written consent of the Port Reading Company.

Provided, however, that nothing herein contained shall prevent the Central Company from increasing its capital stock or indebtedness without the written consent of the Port Reading Company, in such manner as not to subject the Port Reading Company thereby to the
964 payment of any additional rent.

Nineteenth. The Central Company hereby sells, assigns and transfers unto the Port Reading Company, its successors and assigns, all railroad materials, such as rails, ties, oil and other articles generally

known as railroad supplies, which on the day of the date of these presents are or shall be stored but not in use for railroad purposes; and the Port Reading Company agrees to pay for these materials the actual value thereof as they existed on January 1, 1892, when an inventory thereof was taken.

Payment for such supplies shall be made at such times as may be agreed upon, but not later than January 1, 1893. Interest on the value of such supplies shall be computed at five per cent. from January 1, 1892, until payment is made.

Twentieth. That this lease shall not be sold, mortgaged or assigned, and no portion of the demised premises shall be sublet without the consent of the Central Company given in writing under its corporate seal. And no purchaser at any judicial sale, nor assignee, receiver nor mortgagee of the Port Reading Company, nor any assignee thereof appointed under proceedings in bankruptcy, or becoming so by virtue of any act or operation of law in any proceeding against it at law or in equity, shall have any title to or interest in the said premises hereby demised, or any part thereof, without the consent of the Central Company given as aforesaid in writing under its corporate seal.

Twenty-first. For all purposes of this agreement the term "traffic" 965
shall be held to include passenger, freight, coal, mail and express, and all other kinds of rail and water traffic. The terms "Central system" and "lines of the Central Company" shall be held to include all the railroads which form part of the demised premises, including any extensions thereof made under the betterment clause of this lease.

All consents and requests herein provided shall be in writing, and shall be signed by the president, vice-president or secretary of the consenting or requesting party.

Twenty-second. This lease shall take effect as of January 1, 1892. All interest, rentals, taxes, insurance and other accounts shall be adjusted between the parties as of that date and the balance found to be due from either party to the other shall be paid within ten days after ascertainment. All liabilities or charges, and all revenues after January 1, 1892, except expenditures on capital account, shall be charged and credited respectively to the Port Reading Company; provided, however, that any interest, charge, tax, revenue or assessment, payable for any period beginning before January 1, 1892, shall be apportioned between the parties hereto so that the Port Reading Company shall be liable for or entitled to only that portion which shall have accrued after January 1, 1892. All liabilities heretofore incurred by, or in behalf the Central Company, in relation to the demised premises, for or account of which under existing contracts or 966
agreement, payments have been made since January 1, 1892, or are now or may hereafter become due, which are or shall properly be chargeable to capital account, may be liquidated by the Central Company as hereinafter provided respecting betterments made at the request of the Port Reading Company, and with like effect.

Twenty-third. That if the Port Reading Company shall make default in the payment of the rent hereby reserved, or in any of the payments herein covenanted to be made by it for a period of thirty days after the same shall have become due, or shall fail to keep and faithfully perform any of the covenants of this agreement on its part to be kept and performed, then it shall be lawful for the Central Company at its option to declare this lease at an end and the agreements

herein contained to be rescinded, and it may thereupon re-enter and repossess the whole of the demised premises, including all property, real and personal, embraced within the terms of this lease, as of its first and former estate and may resume, take and enjoy all its rights, privileges and franchises as if this agreement had not been made, and notice of the exercise of such option and of the intention to re-enter upon and repossess itself of said demised premises shall operate as a reassignment of the agreements and leases hereby assigned, but the exercise of such option and such re-entry, repossession and reassignment shall not relieve the Port Reading Company from liability to the Central Company, its successors and assigns, for all arrears of rent due and unpaid at the time, and for all damages resulting from
967 the breaches of covenant by the Port Reading Company; and the Port Reading Company hereby covenants and agrees that it will forthwith, after notice of the exercise of such option on the part of the Central Company, deliver over to said Central Company all the property and rights of every kind description as nature then held by said Port Reading Company under this lease, and will on request immediately execute and deliver to said Central Company all agreements, deeds and transfers that may be necessary or proper to reinvest said Central Company with all said demised premises, and all said assignments, leases and contracts as fully as if they were held by the Central Company at the time this lease was made, saving and excepting the personal property purchased and paid for by the Port Reading Company under this agreement, which shall in such case remain the property of the Port Reading Company.

Twenty-fourth. It is understood and agreed, and is of the essence of this contract, that if default shall be made by the Port Reading Company on any of its covenants in and under a certain tripartite agreement of even date herewith, between the Central Railroad Company of New Jersey, the Philadelphia and Reading Railroad Company and the Port Reading Railroad Company, and if such agreement shall be terminated by reason of any such default or for any other reason, then this lease shall, at the option of the Central Company, be thereby at once terminated and ended, and such termination shall operate as a reassignment of all agreements and
968 leases assigned hereby.

Twenty-fifth. It is further covenanted and agreed that in the event of the Central Company resuming possession of the said demised premises as hereinbefore provided, the Port Reading Company shall make good to the Central Company any depreciation in the then aggregate value of the demised premises from their present value.

In Witness Whereof, the parties hereto have caused their corporate seals, duly attested, to be hereunto affixed the day and year first above written.

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY,
——— ———, *President.*

Attest:
——— ———, *Secretary.*

THE PORT READING RAILROAD COMPANY,
——— ———, *President.*

Attest:
——— ———, *Secretary.*

(Marked "Exhibit 77, C. H. G.")

Agreement between the Central Railroad Company of New Jersey, the Philadelphia and Reading Railroad Company, and the Port Reading Railroad Company, dated February 12th, 1892.

969 Articles of a Contract and Agreement, made this 12th day of February, A. D. 1892, by and between The Central Railroad Company of New Jersey, hereinafter called the Central Company, party of the first part; The Philadelphia and Reading Railroad Company, hereinafter called the Reading Company, party of the second part and The Port Reading Railroad Company hereinafter called the Port Reading Company, party of the third part:

Whereas, The lines of the railroads owned, leased and operated by the parties hereto are connected at several points in the States of Pennsylvania and New Jersey, and form continuous lines of railroad between numerous places of commercial importance capable of producing large contributions of freight and passenger traffic to the lines of said Companies, if worked as continuous lines; and

Whereas, The Central Company and the Port Reading Company have negotiated for a lease of all the lines of railroad of the Central Company, whether owned by it or acquired by virtue of any leases, 970 to the Port Reading Company, for the term and period of nine hundred and ninety-nine (999) years, upon the payment of the annual rentals and the performance of the certain covenants, agreements and stipulations contained in the said proposed lease, a copy whereof is hereto attached and made part hereof, which said lease the said Central Company is willing to execute and deliver, if the Reading Company shall guarantee the prompt and punctual payment to the Central Company by the Port Reading Company of the rentals reserved in the said lease as and when the same shall become due and payable, and shall also guarantee the full and faithful performance by the Port Reading Company of all the covenants, stipulations and agreements contained in the said lease by it, the said Port Reading Company, to be kept and performed on its part; and the Port Reading Company is willing to execute and deliver the said lease upon the execution of this contract by the Reading Company whereby there will be assured to the said lines of the Central Company, in addition to the traffic now tributary thereto, such an increase of the traffic thereon as will secure to the Port Reading Company sufficient revenue to meet and pay the said rentals and perform the covenants and stipulations contained in the said lease; and

Whereas, In consideration of the benefits and advantages to be derived hereunder from the use of the terminal properties and facilities of the Central Company so to be leased to the Port Reading Company, and from the interchange of traffic herein provided for, the Reading 971 Company is willing to guarantee to the Central Company the payment by the Port Reading Company of the rentals reserved in the said proposed lease, and the performance by the said Port Reading Company of all the covenants, stipulations and agreements of the said lease by it to be kept and performed, and also of all the covenants, stipulations and agreements herein contained and written to be kept and performed by the said Port Reading Company;

Now, therefore, In consideration of the premises, of the mutual covenants and agreements herein contained between each of the

parties and each of the other parties, as well as for and in consideration of the sum of one dollar by each of the parties in hand paid to each of the other parties hereto, the receipt whereof is hereby acknowledged, the said parties hereto have agreed, and by these presents do covenant and agree to and with each other as follows, that is to say:

First. That the Central Company and the Port Reading Company shall immediately execute and deliver the lease of the railroads and other property of the Central Company, a copy whereof is hereto attached and made a part hereof, with the sanction and approval of the respective Board of Directors of the said companies, and that they shall and will severally thereafter take such proceedings from time to time on the request of the Reading Company as shall, in the
972 opinion of its counsel, be requisite to procure the assent thereto of the necessary number of the stockholders of the said companies, and that the possession and control of the railroads and other property of the Central Company so leased shall forthwith be taken by the Port Reading Company.

Second. That the Reading Company shall and will guarantee and hereby does guarantee unto the Central Company, that the said Port Reading Company shall and will promptly and punctually pay over to the Central Company in each and every year during the continuance of the said lease, on the days and times fixed and appointed in the said lease for the payment thereof, the several sums of money reserved therein by the Central Company as rental for the said railroads and premises. And further, that the said Reading Company shall and will guarantee, and does hereby guarantee, unto the said Central Company that the said Port Reading Company shall and will at all times during the continuance of the said contract of lease, fully and faithfully keep and perform each and every of the covenants, agreements and stipulations contained in the said lease to be kept and performed by it, the said Port Reading Company; and further, that the said Reading Company shall and will guarantee, and does hereby guarantee to the Central Company, that the Port Reading Company shall and will at all times during the continuance of the said contract of lease, and during the continuance of this contract, fully and faithfully keep and perform on its part, each and every of the covenants, agreements and stipulations herein contained to be
973 kept and performed by it, the said Port Reading Company. And that, in case of any default of the said Port Reading Company to pay any of the said rentals on the days and times fixed and appointed in the said lease for the payment of the same, or to make payment of any other moneys provided in the said lease to be made by the Port Reading Company, then and in that event the Reading Company shall pay over the same and each and every sum or amount thereof to the Central Company or to the person or persons entitled to receive the same, on the demand of the Central Company. And in the case of any default of the Port Reading Company to keep and perform any of the covenants, agreements and stipulations contained in the said lease or in this agreement to be performed by it, then and in that event the Reading Company shall cause the said Port Reading Company to keep and perform its covenants, agreements and stipulations in that behalf within thirty days after demand therefore by the Central Company, otherwise the Reading Company shall pay to the

Central Company all damages which shall be suffered by the Central Company growing out of or arising from such breach of its covenants, agreements and stipulations in that behalf by the Port Reading Company.

And further, that in case of the termination of the said contract of lease, by virtue of the provisions thereof, for or on account of the default of the Port Reading Company, or for or on account of the default 974
of the Reading Company to perform its guarantees hereunder, or any of them, or for any other cause, then and in that event the Reading Company shall nevertheless well and truly pay over to the Central Company any and all of the said moneys which shall be due and unpaid by the Port Reading Company at that time, and shall and will well and truly pay any and all damages resulting to the Central Company from the breach or breaches of any of its covenants, stipulations or agreements by the Port Reading Company, whether the same shall be contained in the said lease or herein.

Third. The Port Reading Company shall, during the continuance of the said contract of lease, provide or procure at Jersey City or Port Reading and in New York and Brooklyn the necessary terminal and dock and transfer facilities for all freight and passenger traffic delivered to it by the Reading Company or originating on its lines and those of the Central Company, destined to said points or via such points for points beyond and for all traffic destined from said points to points on or reached by way of the lines of the Reading Company or Central Company.

It being understood that the Central Company shall have the prior right, at its option, to provide the said facilities or any part thereof, except at Port Reading, for the use of the Port Reading Company, under the betterment clause of the lease, and to enable the Central Company to exercise such prior right it shall in all cases receive notice from the Port Reading Company that the said Com- 975
pany desires to procure the same, and in case the Central Company exercises such prior right and provides the same, all amounts expended therefor shall be treated as expenditures for betterments under the betterment clause of the said lease, and any leases or agreements providing the same or any part thereof shall be taken by and in the name of the Central Company, but the rent and other charges therefor shall be fixed charges of the Central Company and shall be paid by the Port Reading Company as such. Such terminal, dock and transfer facilities so provided shall form part of the demised premises, subject as such to all the covenants of said lease.

Should the Central Company, after being requested by the Port Reading Company to provide such terminal, dock and transfer facilities, refuse or neglect for a period of thirty days to take the necessary action thereon, the same may be otherwise procured or provided for by the Port Reading Company.

Fourth. All traffic between points on the Reading system and its connections and points on the Central system and its connections shall be carried on the joint lines of said systems by the most direct route now constructed between the point at which the same shall be received and the point where the same is to be delivered, and shall not be diverted therefrom, except that all anthracite coal not originating on the lines of the Central system may be carried by such 976

route and to such termini as shall be designated by the Reading Company; provided, however—

1. That all anthracite coal from mines now tributary to or hereafter naturally tributary to the Central system shall be forwarded to or toward destination for so long a distance as possible via the lines of that system.

2. All anthracite coal from mines now tributary to or hereafter naturally tributary to the Reading system, and destined by rail to tide-water points in Hudson County, New Jersey, or on the harbor of New York north and east of Elizabeth, or to other points now reached or naturally to be reached by the lines of the Central Company, shall be forwarded over such lines at least from Bound Brook Junction.

3. All anthracite coal for delivery at points on the Central system except to tide-water for reshipment, shall be coal produced at mines tributary to the Central system and shall be transported over such system to destination, whenever such mines tributary to the Central system are able to supply the same.

Provided, however, that if any anthracite coal other than that produced at mines tributary to the Central system shall be delivered at any points on said system except at tide-water for reshipment, the lines of the Central Company shall be credited with the same amount of earnings as if such coal had been shipped from the mines
977 in the Wyoming region.

4. No traffic to or from the Easton and Amboy Railroad or other lines of the Lehigh Valley system, to or from the terminal lands of the Central Company (including the land of the American Dock and Improvement Company), shall pass a shorter distance over the Central lines than between Roselle Junction and such terminal lands, and the Central lines shall be entitled to receive for such traffic the rates fixed by the agreement of April 27, 1887, between the Central Railroad Company of New Jersey and the Lehigh Valley Railroad Company so far as it is applicable.

All business now interchanged between the systems of said companies at points other than Roselle Junction shall continue to be interchanged according to the present traffic arrangements unless otherwise consented to by the parties hereto.

5. Nothing in this agreement contained shall be understood to require the Reading Company to divert or permit or to cause to be diverted from the transportation lines or terminals comprising the system of the Lehigh Valley Railroad Company its present traffic or any traffic which would naturally go over railroads of that system now constructed and operated, to or toward destination by or over the said system or any part thereof.

978 Fifth. All divisions of earnings from traffic interchanged between the lines of the parties hereto shall be made upon the basis which now prevails in respect of the traffic now interchanged between the lines of the Central Company and the Reading Company, including the allowance of arbitraries and the customary terminal charges, and such basis shall not be changed without the agreement of the parties hereto in writing. And if any case shall arise in which the basis of divisions now in force shall not be strictly applicable, the rules and principles upon which such divisions are now made shall be applied

as nearly as may be until the parties hereto shall have agreed upon another basis for such exceptional case or cases.

Sixth. The operations of the lines of the Central Company shall be so conducted and carried on by the Port Reading Company as to maintain and increase the business and earnings thereof so far as possible, and at least to transport over said lines at all times during the continuance of said lease all the traffic now tributary to or passing over the said lines and to augment the same from time to time in proportion to the increase of traffic in the vicinity, and the Reading Company in conducting the traffic of its lines to be interchanged with the said lines to be operated by the Port Reading Company, shall so route, deliver and receive the same that the traffic now tributary to or passing over the lines leased by the Central Company, shall not be diminished, but that the same and the revenues there- 979
from shall be augmented from time to time at least in proportion to the general increase of traffic in the territory occupied by the said lines and their connections, and the vicinity thereof.

It is further and in particular stipulated, covenanted and agreed, in pursuance of the agreements heretofore made to develop the business of the Lehigh and Susquehanna Railroad and branches, that it, the Port Reading Company, will procure all business to be exchanged between points on the Reading system of railroads and its connections and the Central system and its connections, to be routed by the most direct lines formed, or that can be formed, out of existing members of these systems as now constructed; and that at least two-thirds of the all-rail business to be exchanged between points on the Reading and Central systems, or reached via those systems and points on the Poughkeepsie Bridge system, or reached via that system, shall be routed over the Lehigh and Hudson system. Business between points on or reached via the Lackawanna system, the Erie system, or the Ontario system, and points on or reached via the Reading and Central systems, shall, so far as reasonably practicable, be routed via Scranton and the Lehigh and Susquehanna Railroad, and in the event of any deficiency in exchange at Scranton an amount of business that shall make the traffic of the Central system equal to that now done and the probable increase under existing arrangements shall be fur- 980
nished to the Central system at Wilkesbarre or other points on the Lehigh and Susquehanna system; and that bituminous coal, lumber and other like freight, exclusive of anthracite, destined for New York, New England and other points reached by the Central system or Lehigh and Hudson system, which can be now delivered to the Central system by the Nesquehoning Valley Railroad, shall be so routed; and similarly as to use and development, business between points on the Allentown route or reached via that route and points north and east of Allentown shall be routed via the Central system from Allentown, and the division of the charges on the Lehigh and Hudson system and the Poughkeepsie Bridge system shall remain on the present basis;

Provided, however, that all stipulations as to routing shall only be obligatory on the Reading so far and so long as shall be necessary to make and keep the earnings of the Lehigh and Susquehanna Railroad and branches up to the maximum amount stipulated for in the article of the said lease to the Port Reading Company and the earnings of the Central system up to the amount necessary to pay the

maximum rental stipulated to be paid to the Central Company. It is further agreed that copies of all contracts in connection with the
981 construction, maintenance, operation, traffic and other receipts of the demised premises shall be furnished for the information of the Central Company when the same are entered into.

Seventh. The Reading Company shall as soon as the same can be prepared, place in the hands of a suitable Trustee to be mutually agreed upon, securities of the value of two million dollars ($2,000,000), satisfactory to the Central Company, to be held under a Trust Agreement to be prepared to the satisfaction of the Central Company, which the Reading Company shall promptly execute and deliver to secure its guarantee of the prompt and punctual payment of all the said rentals reserved in the said lease made by the Central Company to the Port Reading Company, and the faithful performance of all covenants and agreements of the said lease and hereof, and of any agreements collateral thereto, to be performed by the Port Reading Company or the Reading Company, which said securities, so to be deposited, shall be released and surrendered to the Reading Company when the rentals paid under the said lease by the Port Reading Company in addition to all other payments provided by said lease shall have been equal to ten per centum upon the capital stock of the Central Company for two successive years; and pending the preparation of the said securities, the Reading Company shall otherwise fully satisfy the Central Company in that behalf.

982 Eighth. Each of the parties hereto shall make and enter into in writing, with the other parties and each of them when reasonably requested thereunto, such other and further covenants, agreements and stipulations in the premises as may be necessary to effectuate the true intent, purpose and meaning of the said lease and of this agreement and of the parties hereto, in respect of each and every of the provisions thereof.

Ninth. Should any disagreement arise between the parties hereto as to any matter or thing arising under or in consequence of this agreement and the operations carried on hereunder, or if the parties hereto shall fail to agree as to what ought to be done or omitted, in respect of any matter or thing not specifically covered by the express provisions of this contract, but coming within the general scope and true intent and purpose thereof, every such disagreement shall be determined by arbitration, one arbitrator to be appointed by the Central Company and the other to be appointed by the Reading Company, and the finding of such arbitrators shall be final and conclusive upon the parties hereto as to such controversy. In any case where the arbitrators are to be appointed hereunder and either the Central Company or the Reading Company shall neglect or refuse to make an appointment for a period of ten days after being requested in writing by the other party to make such appointment, which request shall set forth specifically the matter or thing to be submitted, then the
983 arbitrator appointed by the party not in default in making such appointment shall appoint an arbitrator for the party so in default and the two arbitrators so appointed have the same power as though each of them had been appointed by each of the said parties. And in any case where the arbitrators so chosen shall disagree they shall have the right to appoint an umpire and the decision of a majority of the three shall have the same force and effect as though the two arbi-

trators first appointed should have agreed upon such decision as their finding. In case the two arbitrators first chosen by either method cannot agree, and do not agree, within five days after such disagreement and do not select an umpire as above provided, then upon application by either the Central Company or the Reading Company such umpire may be appointed first by the Commissioner for the time being of the Trunk Line Association, or if there be no such Commissioner, or if he for any reason does not act within five days after being requested so to do, by the Chairman of the Executive Committee thereof, and in case of there being no such Commissioner or Chairman or of their refusal or failure to act, then such an appointment may be made on the application of either the Central Company or the Reading Company, by the Chief Justice of the Supreme Court of the State of New Jersey, and failing action by the Chief Justice, for any reason, then by any Justice of the said Court or such Court 984
as may be created in lieu thereof, And in respect of any and every such controversy wherein the Port Reading Company may or shall be affected, it shall also be bound by any award of the arbitrators chosen by either mode above provided for, with like effect as though it had joined in the appointment of such arbitrators.

Tenth. Nothing contained in this agreement shall be so construed as to affect in any wise the obligations of the parties hereto, or any of them, in respect of the tripartite contract made March 30, 1876, between the North Pennsylvania Railroad Company, the Delaware and Bound Brook Railroad Company and the Central Railroad Company of New Jersey, the obligations of which have been heretofore assumed by the Reading Company, nor of the contract dated July 27, 1886, between the Baltimore and Ohio Railroad Company, the Baltimore and Philadelphia Railroad Company, the Philadelphia and Reading Railroad Company, the Schuylkill River East Side Railroad Company and the Central Railroad Company of New Jersey, nor of any modification or supplement executed by the parties thereto, nor of the agreement between the Central Railroad Company of New Jersey and the Lehigh Valley Railroad Company dated April 27, 1887, but in respect of the traffic covered by the said contracts severally, the provisions of the said contracts shall be applied with like effect as though the terms thereof were written herein, and at and upon the 985
termination of the said lease to the Port Reading Company, the provisions of the said above-recited contracts shall continue in force and be binding upon the parties hereto and their successors with like effect as though this contract had not been entered into.

Eleventh. In case of the termination of the lease of the lines of the Central Company to the Port Reading Company at any time, from any cause whatsoever, the Central Company shall have the right to acquire, at its option, an equal interest with the Reading Company in the lines of the Central New England and Western Railroad Company, and in the Poughkeepsie Bridge Company, upon paying therefor the one-half of the net cost of the same to the Reading Company, and assuming the like proportion of all obligations incurred or assumed by the Reading Company, and the Central Company shall have the like option in respect of all railroads or works connecting with the lines of the Central Company, which shall have been acquired or promoted or constructed by the Reading Company and the Port Reading Company, or either of them, during the term of said lease. Such sup-

plemental agreements shall be executed from time to time, as in the opinion of counsel shall be necessary to effectuate this covenant and enable the Central Company at all times to enforce the same.

986 Twelfth. This contract and agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto respectively, and shall continue in force for and during the term of the continuance of the said lease from the Central Company to the Port Reading Company, and thereafter until each and all of the obligations of the Reading and Port Reading Companies thereunder and hereunder shall have been fully and completely performed and discharged.

Thirteenth. The terminal shipping and other facilities of and on lands of the Central Company, including lands of the American Dock and Improvement Company for anthracite or bituminous coal, shall be used only for coal transported over the Central system from Mauch Chunk or points beyond, excepting only anthracite coal from the mines in the Schuylkill region, which may be routed via Bound Brook. The Lehigh Coal and Navigation Company and the Lehigh and Wilkesbarre Coal Company shall be permitted to retain the coal docks now used by them on terms that shall be as favorable as those which may be given to any other parties, and shall not be less favorable than the terms now in force.

Fourteenth. That if it should become necessary, for the purposes of the said lease and of this agreement, and of the lease of the Lehigh and Susquehanna Railroad and branches that the Central Company
987 should request The Lehigh Coal and Navigation Company to operate the Lehigh and Susquehanna Railroad and branches, the Central Company may at its option make such request, and require the Lehigh Coal and Navigation Company so to do, under the terms and conditions of the agreement between the Central Company and The Lehigh Coal and Navigation Company of the 28th of June, 1887.

Fifteenth. For all purposes of this agreement, the terms herein used shall be defined as follows: The term "traffic" shall be held to include passenger, freight, coal, mail and express, and all other kinds of rail and water traffic.

The terms "Central system," "Central lines," "lines of the Central Company," shall be held to include all the railroads which form part of the premises demised by the said lease of even date herewith, including any extensions thereof made under the betterment clause of said lease.

The terms "Lehigh and Susquehanna system," "Lehigh and Susquehanna Railroad and its branches," shall be held to include all the railroads recited in the agreement of March 31, 1871, between the Lehigh Coal and Navigation Company and the Central Railroad Company of New Jersey, and the extensions or branches of the railroads therein recited, and also the Allentown Terminal Railroad, the Lehigh and Lackawanna Railroad, the Wind Gap and Delaware Railroad, and the Wilkesbarre and Scranton Railroad.

The terms "Lehigh Valley system," or "system of the Lehigh 988
Valley Railroad Company," shall be held to include all the railroads and terminals which form part of the premises demised by the Lehigh Valley Railroad Company to the Philadelphia and Reading Railroad Company by lease of February 11, 1892.

The term "Reading system" shall be held to include all the railroads operated by the Philadelphia and Reading Railroad Company, except those embraced in the "Central system" and Lehigh Valley system as hereinabove defined.

The term "Poughkeepsie Bridge system" shall be held to include the Poughkeepsie Bridge and all points between the northerly terminus of the Orange County Railroad and that bridge.

The term "Lehigh and Hudson system" shall be held to include the Lehigh and Hudson Railroad and the Orange County Railroad.

The term "Lackawanna system" shall be held to include the railroads of the Delaware, Lackawanna and Western Railroad Company and all railroads operated by it.

The term "Erie system" shall be held to include the railroads of the New York, Lake Erie and Western Railroad Company and all railroads operated by it.

The "Ontario system" shall be held to include the railroads of the 989
New York, Ontario and Western Railroad Company and all railroads operated by it.

All consents, requests and notices herein provided shall be in writing and shall be signed by the President or Vice President and Secretary of the consenting, requesting or notifying party.

Sixteenth. That in case of the breach of any of the covenants herein contained on the part of the Port Reading Company or of the Philadelphia and Reading Railroad Company, and thirty days' notice thereof given by the Central Company or its assigns to the Port Reading Company, if the same cannot or shall not be fully compensated within said time, then and in such case the Central Company or its assigns may at its or their option declare this agreement and the lease of the Central Company to the Port Reading Company, herein referred to, to be terminated, and the agreements contained therein to be rescinded, and the Central Company may thereupon enter on the property and premises therein and thereby demised as and for condition broken, and repossess itself of the whole of the demised premises, including all property, real and personal, embraced within the terms of said lease, as of its first and former estate, and may resume, take, use, and enjoy all rights, privileges, and franchises thereby demised or granted as if said lease had never been made, and all the rights and powers reserved to the Central Company in and by 990
the twenty-third article of the said indenture or lease shall accrue to and be exercised by the said Central Company in case of the breach of any of the covenants contained in this agreement, as is reserved and stipulated in and by the said article of said lease.

In witness whereof, The said parties hereto have respectively caused their corporate seals to be hereunto attached, and this instrument to be signed by their respective Presidents and attested by their respective Secretaries, under the authority of their several Boards of Directors, the day and year first above written.

Witness:

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY,
——— ———, *President.*

Attest:

——— ———, *Secretary.*

THE PHILADELPHIA AND READING RAILROAD COMPANY,
——— ———, *President.*

Attest:

——— ———, *Secretary.*

991 THE PORT READING RAILROAD COMPANY,
——— ———, *President.*

Attest:

——— ———, *Secretary.*

(Marked "**Government Exhibit No. 78, C. H. G.**")

992 *Memorandum of agreement, made and entered into this twelfth day of February, 1892, by and between the Lehigh Coal and Navigation Company, hereinafter called the Lehigh Company, party of the first part, and the Central Railroad Company of New Jersey, hereinafter called the Central Company, party of the second part.*

Whereas, The Central Company is about to execute and deliver a lease of even date herewith to the Port Reading Railroad Company, of its railroads and appurtenances, including the Lehigh and Susquehanna Railroad and Branches, to be held and operated by the Port Reading Railroad Company subject to the terms and conditions of the agreements of March 31st, 1871, May 29th, 1883 and June 28th, 1887:

Now this agreement witnesseth:

First. That the Central Company has covenanted, promised and agreed, and does hereby covenant, promise and agree to and with the Lehigh Company, that the execution of the said lease to the Port Reading Railroad Company by it shall in no manner prejudice, affect or impair the obligation of the Central Company to keep and perform all the covenants and agreements contained in the said agreements of March 31, 1871, May 29th, 1883 and June 28th, 1887, and that in the event of the termination, from any cause, of the said
993 lease to the Port Reading Railroad Company and re-entry upon the demised premises by the Central Company, the rights and duties of the Lehigh and Central Companies, as between each other, shall remain the same as if the said lease to the Port Reading Railroad Company had never been executed; and the right of the Lehigh Company to object to any future transfer or assignment by the Central Company of its rights relative to the Lehigh and Susquehanna Railroad and branches under the agreements aforesaid shall in no wise be affected or impaired by reason of the failure of the Lehigh Company now to object to the lease hereinbefore referred to from the Central Company to the Port Reading Railroad Company.

Second. All the stipulations and provisions contained in the lease by the Central Company to the Port Reading Railroad Company, and in a certain tripartite agreement of the same date between the Central Company, the Port Reading Railroad Company and the Philadelphia and Reading Railroad Company, so far as the same relate to, or affect the business and operations, or the revenues therefrom, of the Lehigh and Susquehanna Railroad and branches, shall be taken to enure to the benefit of the Lehigh Company, and shall not be modified or rescinded without its consent, and may be enforced by the Lehigh Company against the Port Reading Railroad Company and the Philadelphia and Reading Railroad Company, for 994
its own use and benefit, in the name of the Central Company, but at the cost and expense of the Lehigh Company

Third. In case of the termination of the lease of the lines of the Central Company to the Port Reading Railroad Company, at any time, the Lehigh Company shall have the right to purchase from the Central Company one-half of the interest in the lines of the Central New England and Western Railroad Company, and in the Poughkeepsie Bridge Company, which by the tenth section of the said tripartite agreement the Central Company has the right to purchase from the Philadelphia and Reading Railroad Company, upon the Lehigh Company paying one-half of the cost to the Central Company of its said interest, such cost to include legal interest on such cost less any revenues received, and assuming one-half of the obligations which it shall assume under the provisions of the said tenth section.

Fourth. The Lehigh Company covenants and agrees that in case for any reason the Central Company should desire the Lehigh and Susquehanna Railroad and Branches to be operated by the Lehigh Company, it will, upon the request of the Central Company, so operate the said railroad and branches, as stipulated in the agreement of June 28, 1887.

In witness whereof, the parties hereto have caused their corporate 995
seals to be hereunto affixed, duly attested, the day and year first above written.

By order of the Board of Managers of

[SEAL.] THE LEHIGH COAL AND NAVIGATION COMPANY,
By (Sgd.) J. S. HARRIS, *President.*

Attest:
(Sgd.) S. SHEPHERD, *Secretary.*

[SEAL.] THE CENTRAL RAILROAD COMPANY OF NEW JERSEY,
By (Sgd.) J. R. MAXWELL, *President.*

Attest:
(Sgd.) SAM'L KNOX, *Secretary.*

A true copy—
M. O'CONNOR.
L. A. C. McSHEA.

(Marked "**Government Exhibit No. 79, C. H. G.**")

AGREEMENT OF CO-OPERATION.

The Lehigh Coal and Navigation Company, The Central Railroad Company of New Jersey, and the Lehigh & Wilkes Barre Coal Company, February 1st, 1892.

996 Whereas, An agreement was made and entered into by and between The Lehigh Coal and Navigation Company and the Wilkes Barre Coal and Iron Company under date of March 15, 1870, one of the provisions of which agreement was, that all the coal of the Wilkes Barre Coal and Iron Company "destined for the markets of Philadelphia or New York, or other eastern ports, or ports or points intermediate between Wilkes Barre and New York and Philadelphia accessible by said railroads or canals or other lines of transportation connected therewith" shall be shipped to market over the railroads and canals of the Lehigh Coal and Navigation Company; and

Whereas, This agreement is still in force by the terms thereof, but many of the provisions are no longer applicable to the existing status of the business relations of the parties thereto, and are no longer practically enforced, although the reasons for an union of the interests of the parties thereto still continue; and

Whereas, All the rights and property then held by the Wilkes Barre Coal and Iron Company have since become vested in the Lehigh and Wilkes Barre Coal Company, which, in addition to the lands which were in 1870 owned by the Wilkes Barre Coal and Iron Company in the Wyoming Region, has purchased other lands both in the Wyoming and the Honeybrook Regions, the tonnage of some of which
997 lands is bound by covenants in the deeds to pass over the railroad and canal lines of The Lehigh Coal and Navigation Company; and has or expects to acquire also a joint interest with The Lehigh Coal and Navigation Company in the "Alliance" coal lands in the Schuylkill Region; and

Whereas, The railroads of The Central Railroad Company of New Jersey and the railroads and canals of The Lehigh Coal and Navigation Company together constitute continuous transportation lines from the coal lands of the Lehigh and Wilkes Barre Coal Company to tide-water at New York, to which point most of the coal of the Lehigh and Wilkes Barre Coal Company is shipped, and the said railroads under the agreements of March 31, 1871, May 29, 1883 and June 28, 1887 are operated as one railroad under a single management, and The Central Railroad Company of New Jersey and The Lehigh Coal and Navigation Company are both interested in securing tonnage for the said transportation lines; and

Whereas, Both the said transportation companies are willing to contract to furnish at all times cars and boats for the transportation of the coal of the Lehigh and Wilkes Barre Coal Company on as favorable rates as shall be given by them, or either of them, to any other anthracite producer, or as shall be given by their competitors in transportation to other anthracite producers similarly situated; and

998 Whereas, The Lehigh and Wilkes Barre Coal Company considers it for its interest to secure in perpetuity the most favorable treatment as to supply of cars and rates of transportation, and desires to strengthen the relations that have so long subsisted between it and The Lehigh Coal and Navigation Company and the Central Railroad Company of New Jersey:

Now therefore it is agreed by the Lehigh Coal and Navigation Company, hereinafter called the Lehigh Company, the Lehigh and Wilkes Barre Coal Company, hereinafter called the Wilkes Barre Company, and the Central Railroad Company of New Jersey, hereinafter called the Central Company, in order to preserve, maintain and promote the mutual intersts which the said agreement of March 15, 1870, and the agreements of March 31, 1871, May 29, 1883 and June 28, 1887, were intended to preserve, maintain and promote, that the said agreement of March 15, 1870 be revised and amended, and is hereby revised and amended so that the Wilkes Barre Company shall become, and it does hereby become so far as the covenants of the said agreements are applicable a party to all of the covenants relating to the mining and transportation of the coal mined or to be mined and transported from the lands of the Wilkes Barre Company, which are now contained in the said agreements of March 31, 1871, May 29, 1883 and June 28, 1887, as fully as if it had been an original party to the said agreements, and for the same term as the terms of the said agreements, or until the lands of the Wilkes 999
Barre Company shall become wholly exhausted; and that those covenants shall be held to relate to all the lands now held or to be acquired by the Wilkes Barre Company whether in fee or by lease, and whether in the Wyoming, Honeybrook or any other anthracite region, the Wilkes Barre Company hereby undertaking to do all that the Central Company undertook in the said agreements of March 31, 1871, May 29, 1883 and June 28, 1887 that it should do; and all the covenants of the agreement of August 10, 1881, and any agreement supplemental thereto between the Central Company and the Alliance Coal Mining Company, and all the covenants of the said agreements of March 31, 1871, May 29, 1883 and June 28, 1887 relating to the shipment over the lines of the Central Company of the coal product of the lands owned, leased or controlled by the Lehigh Company shall be held to apply to the coal product of the lands of the Alliance Company, in which lands the Lehigh Company and the Wilkes Barre Company are jointly interested.

The Lehigh Company and the Central Company agree each for itself in so far as it may have the power to act in the premises, that the Wilkes Barre Company shall always be supplied with at least as large a proportion of empty coal cars and canal boats in proportion to its capacity of production and its requirements for transportation as shall be allotted to any other producer of anthracite that may be tributary to the transportation lines of the Lehigh Company or the 1000
Central Company, and the rates of freight charges for rail and canal transportation to the Wilkes Barre Company shall always be as low to all points as the rates named by the Lehigh Company and the Central Company separately or jointly to any other producer of anthracite for similar consignments and like distances, or as shall be given by competing transportation companies for similar consignments and like distances.

The true intent and meaning of this agreement being to continue the policy heretofore pursued by the parties hereto as evidenced by existing agreements, and to cement their interests indissolubly so that they may mutually protect and defend each other, and may successfully resist any effort to sever them.

In witness whereof, The parties hereto have caused their corporate seals to be hereunto affixed, duly attested this first day of February, A. D. 1892.

By order of the Board of Managers of
[SEAL.] THE LEHIGH COAL AND NAVIGATION COMPANY,
By (Sig.) J. H. HARRIS, *President.*

Attest:
(Sig.) S. SHEPHERD, *Secretary.*

[SEAL.] THE CENTRAL RAILROAD COMPANY OF NEW JERSEY,
By (Sig.) J. R. MAXWELL, *President.*

1001 Attest:
(Sig.) SAM'L KNOX, *Secretary.*

[SEAL.] THE LEHIGH & WILKES BARRE COAL COMPANY,
By (Sig.) J. R. MAXWELL, *President.*

Attest:
(Sig.) W. T. ZELL, *Secretary.*

(Marked "**Government Exhibit No. 80, C. H. G.**")

This agreement made the fifteenth day of March, A. D. one thousand eight hundred and seventy (1870) between the Wilkes Barre Coal and Iron Company, parties of the first part and the Lehigh Coal and Navigation Company, parties of the second part.

Witnesseth, That the parties of the first part for and in consideration of the sum of One dollar to them in hand paid by the parties of the second part, the receipt of which is hereby acknowledged and of the performance of the covenants and agreements by the parties of the second part hereinafter mentioned to be kept and performed by them have covenanted and agreed and by these presents do covenant and agree to and with the parties of the second part as follows, to wit:

First. That they the parties of the first part shall and will deliver or cause to be delivered to the parties of the second part for transportation over the railroads and canals of the parties of the second
1002 part during the continuance of this agreement, all the coal produced from the lands and collieries of the parties of the first part now held or owned or which may be acquired by them in fee or otherwise and which may be destined for the markets of Philadelphia or New York or other eastern ports or for ports or points intermediate between Wilkes Barre and New York or Philadelphia accessible by said railroads or canals or other lines of transportation connecting therewith, now or hereafter, and all the lands and collieries of the parties of the first part shall be subject to and be bound by this agreement and shall not be released or discharged from the effect or operation thereof by any lease, sale or alienation of said lands or collieries or any part thereof by the parties of the first part.

Second. That the quantity of coal to be supplied by the parties of the first part to the parties of the second part for transportation under this agreement for all markets east of Mauch Chunk shall not be less than Four hundred thousand tons of 2240 lbs. each per annum and shall be delivered for the said purpose in quantities of Forty thousand tons per month or thereabouts from the First of April to the Thirtieth of November in each year and Twenty thousand tons per month for the remaining months of each year, or in like

monthly proportions if the quantity supplied for transportation as aforesaid shall exceed Four hundred thousand tons in any one year. 1003
And all the said coal for transportation under this agreement shall be delivered by the parties of the first part to the parties of the second part on the sidings of the railroad and its branches of The Lehigh Coal and Navigation Company or on siding convenient to the trains of the said Company. And the parties of the second part in consideration of the premises do covenant and agree to and with the parties of the first part as follows, to wit: That the parties of the second part shall and will furnish all the cars and motive power necessary for the transportation of all the coal supplied or offered from time to time by the parties of the first part provided that notice shall be given by said last mentioned parties to the parties of the second part on or before the first day of January in each year of the quantity of coal that the parties of the first part will produce and furnish monthly for transportation under this agreement, commencing on the first day of April next succeeding said notice. And the said parties do covenant and agree each with the other, as follows, to wit:

First. That the rates of transportation to be charged by the parties of the second part, on all coal destined to Trenton for shipment by canal or to tidal points east of Trenton shall be adjusted from time 1004
to time by the amount of the proceeds of the sales of said coal and in such manner that the parties of the second part shall receive as freight money one half of the said proceeds of all sales made, free on board vessels at points of shipment. And the parties of the second part shall have the right to transport the said coal by such roads or canals and deliver the same at such points of shipment on waters communicating with the Bay of New York as they may elect but if so delivered by them at any other point than Hoboken the settlement of freight shall be so adjusted that the parties of the first part shall be on the same footing as in the case of settlements for deliveries at Hoboken. All terminal charges and expenses of trans-shipment from cars to vessels and all office expenses at points of such trans-shipment and in the City of New York shall be paid by the parties of the first part and the parties of the second part shall pay all transportation charges between Phillipsburg and the said points of trans-shipment.

Second. That on all coal destined to all other points the rates of transportation over the railroads and the tolls on the canals owned or operated by The Lehigh Coal and Navigation Company shall be the regular rates charged other shippers by said Company for transportation between the same points which said regular rates shall not exceed the regular rates established and charged at the same time by the Lehigh Valley Railroad Company for transportation of coal 1005
between the same points, provided that the parties of the first part shall be entitled to a drawback of ten per cent on Railroad charges paid for transportation and Canal tolls paid under this section.

Third. That the lateral freights from the mines reached by the branch railroads of the parties of the second part to Nanticoke Junction shall be at the regular rates not exceeding two cents per ton per mile. But no lateral tolls shall be charged on coal from Sugar Notch to Nanticoke Junction or from sidings between Nanticoke Junction and the Empire mines when the coal is placed on the said sidings by the engines of the parties of the first part in trains ready

for shipment or from South Wilkes-Barre if the parties of the first part shall become lessees or owners of any collieries at Plymouth.

Fourth. That upon such portion of said coal as may be sent to tidal points by Canal from Coalport (the amount to be transported by Canal each year having been assented to by the parties of the second part) the parties of the second part shall receive for the transportation thereof from said sidings to said tidal points the same amount of freight money as they are entitled to receive under this contract for deliveries at Hoboken and in addition thereto a sum equal to the gain of the parties of the first part by reason of said shipments
1006 and deliveries by Canal, so that the parties of the first part shall realize the same net amount and no more from the sales of coal sent by Canal as from sales of coal sent by rail and delivered at Hoboken and all that may be realized in excess of said net amount shall be paid to the parties of the second part as freight money.

Fifth. That all bills for the transportation of coal shall be presented and paid weekly excepting on the coal sent to Trenton for shipment and to tidal points which shall be paid on or before the fifteenth of the month succeeding that during which the coal was transported, payment on account of which shall be made weekly as may be agreed upon from time to time, the final payment to be ascertained by the accounts rendered by the parties of the first part. And the parties of the second part shall by their Agents have access at all reasonable times to the books and accounts of the parties of the first part to verify the account of sales as rendered. The parties of the first part further covenant and agree to and with the parties of the second part that in case the amount of coal offered by the parties of the first part for transportation in any one year shall fall short of Four hundred thousand tons then the gross amount to be paid by them to the parties of the second part for transportation that year shall be equal to
1007 the gross amount that would have been paid had Four hundred thousand tons been offered and shipped at the regular rates of transportation as fixed from time to time by the parties of the second part, except when such deficiency is caused by strikes or disasters as hereinafter mentioned. And it is mutually understood, covenanted and agreed by and between the parties hereto that any failure on the one part to produce and offer for shipment or on the other part to transport to market any portion of said coal occasioned by strikes or turnouts of mines or laborers or Railroad employes, or by fire, flood or other unavoidable disaster shall not be deemed a violation of this contract on the part of either party. And it is further hereby mutually agreed that a certain article of agreement made by the parties hereto and dated the first day of June, A. D. 1865 and executed the Eighteenth day of August, A. D. 1865 be and the same is hereby cancelled and made void and of no effect excepting however and reserving to the lessees of the Sugar Notch collieries all the rights they may have under said article of agreement hereby cancelled. This agreement shall commence at the date hereof and shall continue for the term of fifteen years and until terminated by three years notice to be given at any time thereafter by either party to the other. PROVIDED

however that the parties of the second part shall have the right to terminate this agreement on the first day of January eighteen hundred and seventy two by giving the other party twelve months pre- 1008
vious notice to that effect.

Sixth. That if this contract be terminated on the first day of January A. D. one thousand eight hundred and seventy two in accordance with notice to be given by the parties of the second part as aforesaid, the parties of the first part shall be entitled to purchase and the parties of the second part will sell and convey to them for and in consideration of the sum of Three hundred and eighty thousand dollars, to be paid in cash all that part of the Nanticoke Railroad owned by the parties of the second part which lies east of the property of the Franklin Coal Company in the County of Luzerne including the river branch and the branch to the Everhart mines which said part of the said Railroad is further described and designated on the map or plan annexed hereto if the parties of the second part shall be authorized by law to sell the said premises. But the said right to purchase shall be contingent upon notice from the parties of the first part to the parties of the second part of their intention to purchase, to be given on or before the first day of July A. D. One thousand eight hundred and seventy-one, and if no such notice be given on or before the said date, the said right shall be regarded as waived and surrendered. And the parties hereto mutually covenant and agree that they will in the event of the notice last aforesaid being given, co-operate in all such lawful acts and means as may be necessary to 1009
enable the parties of the second part to grant and convey the said premises to the parties of the first part for the said sum of Three hundred and eighty thousand dollars, so as to vest in the parties of the first part a good and valid title to the same free from incumbrances, the parties of the first part paying all fees and expenses incident to such acts and means and all costs and expenses of conveyancing including the cost of revenue stamps. And in case the parties of the first part shall purchase the aforesaid premises in the manner and within the time aforesaid then all the assignable rights which the parties of the second part now have under a certain agreement made between them and the Union Coal Company dated the Seventh day of November A. D. one thousand eight hundred and sixty six shall be assigned to the said purchasers by the said parties of the second part hereto. But if the parties of the second part shall not have power to sell the aforesaid premises or secure the same to the parties of the first part (in case they shall purchase the same as aforesaid) free and discharged from all liens and incumbrances, then the possession thereof shall be given to the parties of the first part at an annual rent of twenty eight thousand dollars, to be paid by them in equal monthly payments to the parties of the second part until 1010
such disability be removed, provided the parties of the first part shall give to the parties of the second part satisfactory security for the payment of the said rent.

In witness whereof, the said parties have caused their respective corporate seals to be hereunto affixed, duly attested, the day and year first above written.

By order of the Board of Directors of
THE WILKES BARRE COAL & IRON CO.,
CHARLES PARRISH, *President.*

Attest:
S. M. WILLIAMS, *Secretary pro tem.*

By order of the Board of Managers of
THE LEHIGH COAL & NAVIGATION COMPANY.
By E. W. CLARK, *President.*

Attest:
F. MITCHELL, *Secretary.*

(Marked "**Government Exhibit No. 81, C. H. G.**")

*912 Mr. GORDON. I offer in evidence also the following extracts from the minutes of meetings of the managers of the Lehigh Coal and Navigation Company.

Mr. REYNOLDS. I reserve objections to these until I have had an opportunity to read them over.

Extract from the minutes of the meeting of the managers of the Lehigh Coal and Navigation Company, held April 5, 1897.

The president read a letter from the Parrish Coal Co. making application for permission to divert all or a part of the coal tonnage produced at their Plymouth colliery so as to make the shipments via the Pennsylvania Railroad instead of the Central Railroad of New Jersey. This colliery is on land of the Lehigh and Wilkes-Barre Coal Company, and by the terms of the lease of the Lehigh and Susquehanna Railroad to the Central Railroad Company of New Jersey all of this tonnage is bound to go over our road.

Under the present manner of regulating the coal trade the capacity for shipment over the lines of the Central Railroad of New Jersey is very much greater than the market requirements, and any diversion of this kind can easily be made up from the other collieries, to the advantage of the other shippers.

The Parrish Coal Co. offer to pay to this company ten cents per ton on all coal produced by them which is diverted from our railroad.

913 As the coal available for shipment over our railroad is of such a magnitude that it is estimated it will maintain shipments for more than one hundred years to come, the payment of ten cents per ton now proposed to be made at compound interest will equal more than fifty cents per ton fifty years hence, which is in excess of the sum we would be likely to receive as our share for the transportation of this coal.

After discussion—on motion—the president was authorized to consent to the diversion by the Parrish Coal Company of all or a part of the tonnage of their Plymouth colliery, for a period of one year from June 1st, 1897, in consideration of the payment to this company by the Parrish Coal Co. of ten cents per ton on all the coal so diverted: Provided, that the Central Railroad Company of New

* So numbered in original.

Jersey request that such diversion be made, and agree (1) that such action shall not be construed to affect in any way any of the existing agreements between our respective companies; (2) that the coal so diverted shall not be counted in the production of the Central Railroad of New Jersey; and (3) that the ten cents per ton paid to this Company by the Parrish Coal Co. shall not be considered in any way as a part of the gross receipts of the Lehigh and Susquehanna Railroad.

Extract from the minutes of the meeting of the managers of the Lehigh Coal and Navigation Company held June 7, 1897. 914

Referring to the application of the Parrish Coal Company for permission to divert a part of their tonnage from our railroad lines to those of the Pennsylvania Railroad Co., reported at the last meeting of the board, when such permission was authorized, the president stated that the consent of all the parties necessary had now been obtained, and shipments under this agreement would probably soon begin.

The president stated that he had also received an application, under date of June 4, 1897, from J. R. Maxwell, president, Lehigh & Wilkes-Barre Coal Company, in which he makes the following statement:

"The Lehigh & Wilkes-Barre Coal Co. is desirous of shipping its surplus nut coal west, and would like to have your consent to an arrangement similar to that made with the Parrish Coal Co. We could ship from 25,000 to 50,000 tons per annum. Kindly let me hear from you, and if agreeable to your company, I will forward the necessary notice from the Central Railroad Company of New Jersey consenting to the diversion of tonnage, as in the case of the Parrish Coal Co."

In considering this request, the president said that the same conditions existed in this case as in that of the Parrish Coal Company, and he would recommend that permission be granted, limiting the time in which such diversion should be made to the year 1897. 915

After discussion,

On motion, the president was authorized to consent to the diversion by the Lehigh & Wilkes-Barre Coal Company of a portion of their tonnage, not to exceed 50,000 tons, during the year 1897, in consideration of the payment to this company by the Lehigh & Wilkes-Barre Coal Company of 10 cents per ton on all coal so diverted: Provided, That the Central Railroad Company of New Jersey shall request that such diversion be made, and agree (1) that such action shall not be construed as affecting in any way any of the agreements existing between our respective companies; (2) that the coal so diverted shall not be counted in the production of the Central Railroad Company of New Jersey; (3) that the 10 cents per ton paid to this company by the Lehigh & Wilkes-Barre Coal Company shall not be construed in any way as a part of the gross receipts of the Lehigh & Susquehanna Railroad.

Extract from the minutes of the meeting of the managers of the Lehigh Coal and Navigation Company held March 6, 1899.

The president referred to the matter of our supply of empty coal cars, in relation to which the board has taken action on several occasions, and which has been for a long time a constant source of friction between this company and our lessees, and stated that he was pleased to report to the board that the matter was in much more
916 satisfactory shape than it had been at any time previously. The Central Railroad Company has never up to this time been willing to admit that our claim of 3.5 per cent of the total production of coal was due that they should recognize, or that the shipments as shown by a series of years justified us in demanding.

While asserting at all times that our contract gave us the right of not only this percentage, but to all the cars we needed, we have agreed as a temporary expedient, and for the sake of harmony, to accept 3.5 per cent. The Central Railroad Company having asked for large expenditures on the line of our road in the way of additional sidings, yard facilities, and extensions of track, opportunity was taken of their demand to bring about a settlement of the car question. After many conferences it was finally agreed that if we would waive for the present our claim for shortage on account of car supply in the past year, and promptly approve the requisitions for such work as we were legally bound to pay for under our lease, the Central Railroad Company would agree that we should have cars to enable us to ship at least 3.5 per cent of the total output, and that the number due should be adjusted monthly. The Central Company did not wish to make a formal agreement embodying this settlement, and it was arranged that a memorandum of agreement between counsel should be made to cover it. This was done, the memorandum being as follows:

917 "Memorandum of Understanding reached at interview held February 9th, 1899, at Philadelphia, Penna.

"First. The L. C. & N. Co. is to receive coal cars as called for sufficient for it to ship each month 3.5 per cent of the total allotted shipments of the anthracite field.

"Second. Any deficit in cars in one month to be made up in the succeeding month.

"Third. The claims for damages for lack of equipment in the past are not to be pressed during the year 1899 if cars are furnished in accordance with this understanding, and if cars are supplied throughout the year, the claims to be abandoned. In case cars are not supplied then the L. C. & N. Co. to be at liberty to reassert its claims.

"Fourth. The L. C. & N. Co. to assent promptly to all requisitions for construction work fairly within the first mutual covenant of the lease and in accordance with the custom of business between the two companies up to date.

"(Signed) S. D.
"(Signed) R. W. de F."

"Supplemental Note.

"It is suggested that in behalf of the L. C. & N. that if smaller sizes be hereafter excluded from the allotted tonnage, that it is to have in addition to the 3.5 per cent of the allotments, cars sufficient to make all possible shipments of the small sizes consistently with the requirements of other shippers of the L. & S. even though the total shipments of all sizes should thus be made to exceed 3.5 per cent 918
of the total output of the region."

(Copy of telegram.)

"NEW YORK, *Feb. 10th, 1899.*

"SAMUEL DICKSON,
"*131 South Fourth St., Philadelphia.*

"Mr. Maxwell ratifies and approves our agreement of yesterday. I understand that it is without prejudice to the lease and is not intended to vary its terms, but only to define and settle present and past obligations under it.

"(Signed) ROBERT W. DE FOREST."

Extract from the minutes of the meeting of the managers of the Lehigh Coal and Navigation Company held February 5, 1900.

The production of coal for the year just closed is the largest in the history of the company, and is equal to 3.4 per cent of the total anthracite shipments. This is somewhat under the percentage of 3.5 per cent which the Central R. R. Co. of N. J. agreed in our settlement of February last we should receive. The Central Company having failed to furnish cars to enable us to ship the amount agreed upon, we are at liberty to consider the agreement of February 9, 1899, as terminated, and the Central Company has been so notified.

During December complete embargoes were placed on our shipping coal over the Pennsylvania Lines, preventing us from making deliveries to many points in the Philadelphia market, where we have contracts calling for regular shipments. To overcome this difficulty and to increase our production arrangements were made with the Philadel- 919
phia & Reading Ry. Co. for shipments of coal over the lines of that company via Tamaqua. Notice was given to the Central Railroad Company that we proposed to avail ourselves of the option given in the lease to divert 25 per cent of our tonnage to other lines. The Central Company objected to our doing this, but have been told that so long as we were not furnished with all the cars we required and the coal was not delivered to the points to which we consigned it, we should continue to exercise our discretion in the matter. One immediate result has been that during the month of January we have been supplied with more cars than we could load, and our production for that month, as above reported, is the largest the company has produced.

Extracts from the minutes of meetings of the board of managers of Lehigh Coal & Navigation Company showing its cash advances and bond guarantees for the Lehigh & New England Railroad Co.

(Meeting March 20th, 1905.)

On motion,

The recommendation of the finance committee to make advances to the Lehigh & New England Railroad Co. of an amount not to exceed $100,000 for expenses necessary to the improvement of the property was approved and their action was adopted as the action of the board.

920 (Meeting October 7, 1907.)

The president stated that the Lehigh & New England Railroad Co. had a contract with Brown Bros. & Co. under which they leased certain equipment, payment for which amounting to $99,710 was due on the 8th instant. He further stated that in view of the contemplated purchase by that company of additional equipment and the creation of a car trust, Brown Bros. & Co had agreed to extend the time of payment under the contract for six months at six per cent, upon a cash payment of $20,000. As the railroad company has no available funds at this time to make the payment, it is necessary for the Lehigh Coal & Navigation Co. to advance this amount. This he recommended provided we were protected by an assignment of an equity in the equipment for that amount. Whereupon,

On motion,

The officers of the company were authorized to advance $20,000 in payment on account of the equipment trust obligation of the Lehigh & New England Railroad Co., papers in the matter to be prepared by counsel protecting the parties in interest.

(Meeting July 1st, 1907.)

On motion,

The officers of this company were authorized to loan to the Lehigh & New England Railroad Co. $100,000 at five per cent on their note, expenditures to be made in accordance with the following schedule, provided there is no commitment beyond $100,000, and that the same shall only be available when, in the opinion of the President of the
921 Lehigh Coal & Navigation Co. the expenditure contemplated is advisable.

(Meeting March 23, 1908.)

On motion,

Resolved, That the president be authorized to loan to the Lehigh & New England Railroad Co. a sum not to exceed $100,000 to be used in hiring certain box cars, coal cars or locomotives under the usual car lease by the provisions of which, on completion of the term and payment of rentals, title to the cars will be acquired by the Lehigh & New England Railroad Co., and when said lease has been assigned under the usual form of car trust and equipment certificates issued thereunder, the president is authorized to purchase the same at par to an amount not exceeding $450,000.

* * * * * * *

On motion,
Resolved, That the president be authorized to lend the Lehigh & New England Railroad Co. $50,000 taking their note on demand with interest at 6 per cent.

(Meeting February 10, 1908.)

The president submitted the following review of the financial condition of the Lehigh & New England Railroad Co., with suggestions for the rearrangement of its finances:

* * * * * * *

While it may not be thought wise to bring out a plan for the reorganization of the finances of the railroad company in the immediate future, we are, I think, agreed that some better arrangement than now exists for providing funds for necessary improvements and betterments should be considered, so as to be ready to launch it at the 922
proper time.

Whatever may be said against lending the credit of the Lehigh Coal & Navigation Co. for such purposes, I am confident that no plan for financing the needs of the railroad company can hope to be a success without its guarantee.

(Meeting April 27, 1908.)

Resolved, That the proper officers of this company be and they are hereby authorized to indorse on $450,000 Lehigh & New England equipment trust certificates, series A, the guarantee of this company in the following form:

"The Lehigh Coal & Navigation Co., for a valuable consideration, hereby gurantees the prompt payment at maturity of the principal of the within certificate and of the dividends thereon, according to the terms of said certificate and the dividend warrants thereto attached."

Extract from the minutes of the executive committee of the Lehigh Coal & Navigation Company held October 16, 1905.

A report submitted by the president at the last meeting of the 923
committee on the proposed extension of the Lehigh & New England Railroad system was given consideration, and after discussion, on motion, the president was authorized to make the necessary preliminary survey to determine the location and approximate cost of the new railroad lines as outlined in his report. * * *

Extracts from the minutes of meetings of the board of managers of the Lehigh Coal & Navigation Co. showing its promotion and financing of Lehigh & New England Railroad's extension from Danielsville to Tamaqua to connect with the Panther Creek Railroad.

(Meeting April 25, 1910.)

On motion,
Resolved, That the officers of the company, in connection with the executive committee, be authorized to arrange the details for the construction of a line of railroad connecting the Panther Creek Railroad at or near Tamaqua with the Lehigh & New England Railroad

at or near Lehigh Gap, whether by extension of the Lehigh & New England or by construction to be undertaken by an independent corporation, and to report to the board at as early a date as may be possible.

(Meeting September 26, 1910.)

The president stated that the Lehigh & New England Railroad Company had completed its surveys and estimates for the extension of its line of railroad from Danielsville to Tamaqua, to a point of connection with the Panther Creek Railroad of this company, and he asked the board to consider the building of this line, with such recommendations to the Lehigh & New England Company as would be desirable.

(Meeting October 4, 1910.)

The president stated that the line had been located on the ground
924 and adopted by the board of directors of the Lehigh & New England Railroad Company, in accordance with the authority granted to the officers of that company.

(Meeting October 10, 1910.)

* * * the following preamble and resolutions were, after discussion, unanimously adopted: * * *

Resolved, That this company approves of the construction by the Lehigh & New England Railroad Company of a lateral road or branch line from Danielsville, Pa., to Tamaqua, Pa., to a point of connection with the Panther Creek Railroad of the Lehigh Coal & Navigation Co.

Resolved further, That the officers of the company be, and they are hereby, authorized to advance to the Lehigh & New England Railroad such sums of money as may be required from time to time, not to exceed in the aggregate $1,750,000, taking the notes of the Lehigh & New England Railroad Company therefor, secured by a deposit of the general mortgage four per cent bonds of the Lehigh & New England Railroad Company in such amounts and on such terms as the officers of the company may determine.

* * * * * * *

The president stated that he had been negotiating with Brown Bros. & Co. for the sale of these bonds (Lehigh Coal & Navigation Co. collateral trust four and one-half per cent bonds), which they had offered to purchase at 97 and interest, their firm agreeing to divide equally with this company any premium that may be obtained from the sale of the bonds at a higher price than par.

After discussion it was,

On motion,

925 *Resolved*, That the president be, and he is hereby, authorized to sell to Brown Bros. & Co. $1,750,000 Lehigh Coal & Navigation Co. 20-year collateral trust 4½ per cent bonds, dated November 1, 1910, upon the terms mentioned.

(Meeting April 22, 1912.)

The president stated that the Lehigh & New England Railroad Company is short of funds to meet its obligations, consisting of payment on account of principal and interest due May 1st on Lehigh & New England equipment trust series B, and payment on account of principal and interest due June 1st on equipment trust series A, amounting to $98,850, and unpaid interest on its bonds due April 1, 1912, amounting to $74,190, in addition to which the company owes the Bethlehem Steel Co. for rails bought for rerailing the line from Danielsville to Pen Argyl, to take care of traffic coming from Tamaqua extension, $66,362.05, making a total of $239,402.05. The shortage in funds of the Lehigh & New England Railroad Company is accounted for by a deficit in its earnings during the past few years and payments made on account of principal of equipment trust series A, thereby exhausting its working capital. To carry the company over the period of the construction of the Tamaqua extension the president recommended that the board authorize a temporary loan, with interest at 5½ per cent, to the Lehigh & New England Railroad Co., the amount not to exceed $200,000.

After discussion it was,

On motion,

Resolved, That the Lehigh Coal & Navigation Co. loan to the Lehigh & New England Railroad Co. on demand note, with interest at 5½ per cent per annum, on such sums of money as may be required during the next three months up to an amount not to exceed in the aggregate two hundred thousand dollars ($200,000). 926

(Meeting December 23, 1912.)

Referring to the recommendation of the executive committee, the president stated that this company holds $2,885,000 Lehigh & New England Railroad Company general 4 per cent bonds, due April 1, 1958, which the Lehigh & New England Railroad Co. has offered to purchase on a five per cent basis and a premium of 2½ per cent and accrued interest, and $700,000 Lehigh & New England Railroad Company demand notes, both of which obligations the railroad company will pay off if this company will agree to subscribe at par to capital stock to the amount of $3,145,000; and he recommended that this subscription be authorized.

After discussion it was,

On motion,

Resolved, That the officers of the company be, and they are hereby, authorized to subscribe and pay for at par ($50 per share) capital stock of the Lehigh & New England Railroad Company to the amount of $3,145,000.

Extract from the minutes of a meeting of the board of managers of the Lehigh Coal & Navigation Co., held February 1, 1897, showing financial relations with the Lehigh & Hudson River Railway Company. 927

The president further reported that the stockholders of the Lehigh & Hudson River Railway Company have authorized the sale of $500,000 of their five per cent 30-year general mortgage bonds to this

company, and the Central Railroad Company of New Jersey ($250,000 each) at 90 per cent. Our respective companies already own the following amounts of these bonds:

Central Railroad Company of New Jersey	$281,000	
The Lehigh Coal & Nav. Co.	280,000	
		$561,000
Amount to be purchased		500,000
Amount owned by the two companies after purchase		1,061,000

The Central Railroad Company are willing to join us in the purchase, and it is proposed that we jointly guarantee the same, and sell them at not less than par.

* * * * * * *

The transaction above outlined would probably yield us a profit of from $20,000 to $25,000 and would also permit of the repayment of us by the Lehigh & Hudson Co. of loans amounting to $87,500 and unsettled claims of about $10,000, as well as provide for the payment of other notes of the Lehigh & Hudson Co. which we have undertaken to float for them. * * *

On motion, it was

928 *Resolved*, That this company hereby agrees to join the Central Railroad Company of New Jersey in guaranteeing the prompt payment of the principal and interest of the general mortgage five per cent thirty-year bonds of the Lehigh & Hudson River Railway Co. to the value of $1,000,000.

Extract from the minute upon the death of Mr. Edward W. Clark adopted at a meeting of the board of managers of the Lehigh Coal & Navigation Co., April 18, 1904.

* * * * * * *

As one result of his services, the most valuable coal properties in the Wyoming Valley are permanently tributary to the Lehigh & Susquehanna Railroad, and the railroad itself is operated by the Central Railroad Company of New Jersey under a lease which makes it to its own advantage to develop the business and the resulting revenue to the Lehigh Company to the greatest possible extent.

929 Mr. GORDON. I also offer certain extracts from the minutes of meetings of the board of directors of the Reading Company.

Mr. REYNOLDS. I reserve the same opportunity to scrutinize those exhibits and make any proper objections at the next meeting.

The extracts offered are as follows:

Extract from the minutes of a meeting of the directors of Reading Company held April 12, 1901.

The following minute, defining the duties of Mr. W. R. Taylor, vice president, was unanimously adopted.

* * * * * * *

The nomination of all officers in the secretary's, treasury, and accounting departments of this company, and of its owned and controlled companies, except the Central Railroad Company of New

Jersey, shall be made by the heads of the said departments to the vice president, who shall submit them, with his approval or disapproval, and with a recommendation of amount of salary, to the president for approval, and for confirmation by the board under regulations to be hereafter adopted.

He shall recommend additions to the clerical force in said departments when necessary, and may at any time direct the discharge of any employee therein if, in his judgment, the interests of the company require it.

Extract from the minutes of a meeting of the directors of Reading Company held March 19, 1902. 930

The president reported that Mr. Charles H. Warren had tendered his resignation as vice president of the Central Railroad Company of New Jersey to take effect June 1, 1902, and that as president he had appointed Mr. W. G. Besler as general manager of the Central Railroad Company of New Jersey, who will assume the duties at once.

Extract from the minutes of a meeting of the directors of Reading Company held on September 17, 1902.

The president presented the following report of the committee appointed at the meeting on June 18th:

"The undersigned, appointed a committee of the Reading Company to consider the proper division of the salaries of those officers who have duties in connection with more than one of the three Reading companies, make the following recommendation, viz:

"That the salaries of persons whose names are on the attached schedule should be divided as therein stated:

* * * * * *

Division of salaries of such of the officers of the several Reading companies as have duties relating to more than one of these companies.

931

Name.	Occupation.	Reading.	Railway.	C. & I. Co.
		Per cent.	*Per cent.*	*Per cent.*
George F. Baer	President	50	25	25
Joseph S. Harris	Contract	.....	100	.....
C. E. Henderson	Vice president	.....	50	50
W. R. Taylor	Vice president	40	40	20
W. A. Church	Treasurer	40	30	30
D. Jones	Comptroller	40	60	.....
J. D. Campbell	General solicitor	30	50	20
Charles Heebner	Assistant general solicitor	.....	50	50
J. D. Loomis	Real estate agent	35	65	.....
C. W. Klink	Assistant real estate agent	35	65	.....
J. D. Landis	Purchasing agent	.....	70	30

"The services of all of the other general officers are given to but one company."

Whereupon, on motion duly seconded, the report was accepted and the recommendations of the committee were approved.

Extract from the minutes of a meeting of the directors of Reading Company held January 18, 1911.

Upon motion duly seconded, the following minute was adopted:

Whereas in and by section 12 of article 2 of the general mortgage of Reading Company and the Philadelphia & Reading Coal & Iron Company, dated January 5, 1897, it is provided that "the Reading Company shall not, and will not, in any year declare or pay any dividends upon its stock, either common or preferred, until, or unless, prior to,
932 or simultaneously with, such declaration, it shall deliver to the trustee a statement in writing, under its corporate seal, showing the amount of anthracite coal mined from lands owned by the coal company and mortgaged hereunder, during the year next preceding the declaration of such dividend, and simultaneously shall pay to the trustee hereunder a sum equal to five cents per ton on all coal so mined in such next preceding year, if the aggregate of dividends so declared shall be equal to or shall exceed such sum, and otherwise such lesser sum as shall be equal to the aggregate of dividends so declared;" and

Whereas Reading Company, on December 21, 1910, declared a dividend of three per cent on its common stock outstanding viz. upon $70,000,000, the aggregate of which dividend will amount to $2,100,000, payable on February 1, 1911; and

Whereas during the year ended December 31, 1910, there have been mined from the lands owned and controlled by the Philadelphia & Reading Coal & Iron Company, and mortgaged under the said general mortgage, anthracite coal amounting to 9,192,982.20 tons, upon which, under the terms of the said general mortgage, the amount payable to the trustees thereof is $459,649.11.

Resolved, That the proper officers of the company be, and they are hereby, authorized to deliver to the trustee, a statement in writing, under the corporate seal of the company, showing that during the year
933 ended December 31, 1910, there were mined from lands owned and controlled by the Philadelphia & Reading Coal & Iron Company and mortgaged under the said general mortgage, 9,192,982.20 tons of anthracite coal, and that the said officers be, and they are hereby, authorized to pay to the trustee of the said mortgage the sum of $459,649.11, being five cents per ton upon said coal, said sum to be used and applied as provided in the said mortgage.

On motion, duly seconded, the following minute was adopted:

Whereas Reading Company, in pursuance of the provisions of article 1 of section 12 of the general mortgage of Reading Company and the Philadelphia & Reading Coal & Iron Company, dated January 5, 1897, proposes to apply the sum of $459,649.11 (being the sinking fund which accumulated from setting apart five cents per ton upon all anthracite coal mined from lands owned and controlled by the Philadelphia & Reading Coal & Iron Company and mortgaged under the said general mortgage, during the year ended December 31, 1910, and being intended to represent the depletion of the said land caused by the mining of the said coal and the consequent depreciation of the

value of the amount due by the Philadelphia & Reading Coal & Iron Company to Reading Company), towards the purchase and cancellation of bonds secured by the said general mortgage;

And whereas the funds out of which the said general mortgage bonds are proposed to be purchased were derived from business which resulted from the mining of the said coal and the consequent depreciation in the estate of the Philadelphia & Reading Coal & Iron Company; 934
therefore,

Resolved, That the indebtedness of the Philadelphia & Reading Coal & Iron Company be reduced by the amount of the par value of the general mortgage bonds which shall be so purchased and cancelled, and that the officers of the company be and they are hereby authorized to make proper entries upon the books of Reading Company in accordance herewith.

Extract from the minutes of a meeting of the executive committee of Reading Company, held October 13, 1898.

Mr. Harris stated that we have acquired control of the Wilmington & Northern Railroad by purchase of the majority interest of the stock. This railroad has heretofore exchanged a large amount of business with us and has furnished a market for 100,000 tons of coal. It has the right to use to a considerable extent our facilities in Reading. It has a good position in Birdsboro, in Coatsville and in Wilmington, which towns are the seat of important industries. We were promised several years ago by the parties who owned the controlling interest in this stock that if they ever should be willing to sell their holdings we should have an opportunity to buy. The decision to sell was reached this summer, and we were offered the stock at the price bid by other 934½
responsible parties. The executive committee of the Reading Company, after careful consideration, deemed it adverse to the Reading's interests to allow this property to pass to the control of alien interests and agreed to make the purchase which has been consummated.

Subject to the production of the various documents called for, to be 935
spread upon the minutes of this session, the Government rests.

Mr. REYNOLDS. The defendants give notice that they will hold a meeting for the taking of testimony at 11 o'clock a. m. on Tuesday, the 17th of March, 1914, at the Reading Terminal offices in Philadelphia, Pa.

Adjourned until Tuesday, March 17, 1914, at 11 o'clock a. m.

Return of examiner.

In the Circuit Court of the United States for the Eastern District of Pennsylvania.

THE UNITED STATES OF AMERICA, plaintiff, *v.* READING COMPANY AND OTHERS, defendants.	Sept. sessions, 1913. In equity.	No. 1095.

I, Charles H. Guilbert, duly appointed by the court as examiner to take the testimony in the above-entitled cause, either within or without this district, and to report the same to the court, do hereby certify that, beginning, pursuant to notice, on February 9, 1914, and continuing from time to time thereafter, I have taken or caused to be taken and recorded all the testimony of the witnesses produced and the exhibits offered on the part of the plaintiff, on the examination in chief, as well as all the proceedings connected therewith, the signing of the testimony by the witnesses respectively being waived by counsel; and that the foregoing is a complete and true record of all such testimony, exhibits, and proceedings, the same beginning with the proceedings before the examiner on February 9, 1914, and ending with the proceedings on March 9, 1914, and including Government Exhibit No. 1 to Government Exhibit No. 81, inclusive.

In witness whereof I have hereunto set my hand this 14th day of March, 1914.

C. H. GUILBERT, *Examiner.*

Minnesota State Library.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1919.

G. T. BRYANT ET AL.,

vs.

THE UNITED STATES OF AMERICA.

PETITIONERS' MOTION.

Wm. H. ATWELL,
Attorney for Petitioners, G. T. Bryant et al.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1919.

G. T. BRYANT ET AL.,

vs.

THE UNITED STATES OF AMERICA.

PETITIONERS' MOTION.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Come now G. T. Bryant, Z. L. Risley and S. J. Powell and show to the Court:

I.

That in the Abilene Division of the Northern District of Texas, they were indicted, with fifty-two others, in an indictment containing eight counts, for various alleged oppositions to the Government; that the trial lasted many weeks and at the conclusion thereof, fifty-two of the said defendants were acquitted and these petitioners were acquitted of seven counts of the said indictment and convicted under one count; that thereafter they duly and seasonably prosecuted their writ of error to and in the United States Circuit Court of Appeals for the Fifth Circuit, which Court, on March 24th, 1919, affirmed the judgment of the lower court and on April 30th, 1919, overruled an application for a rehearing and on May 5th, 1919, granted thirty-five days to present an application for a writ of certiorari to the Supreme Court of the United States.

That thereafter said application for a writ of certiorari was duly made, and forwarded, together with a check for $25.00, and certain certified proceedings in the said Circuit Court of Appeals, together with all other necessary papers, save and except the testimony and record of the lower court, and, that these papers were received by the Honorable James D. Mayer, Clerk of this Honorable Court, on May 27th, 1919, but that the said Clerk refused to file the said application for the reason that "the said record of the lower court had not been certified as required by the rules."

II.

That thereafter, on June 19th, 1919, the Honorable Richard W. Walker, United States Circuit Judge for the Fifth Circuit, entered an order staying the mandate in the said Court of Appeals until November 1, 1919, so that these petitioners could present their petition to this Honorable Court.

III.

That the Honorable, the Solicitor General of the Department of Justice of the United States, on May 17th acknowledged receipt of the petition for certiorari.

IV.

That attached hereto are copies of the orders and letters and acknowledgments herein referred to.

V.

That these petitioners are indigent and they pursued their writ of error in the Circuit Court of Appeals under and by virtue of the Act of June 25th, 1910, Chapter 435, page 45, First Volume Federal Statutes, Annotated, reading, in part, as follows:

"That any citizen of the United States entitled to commence or defend any suit or action, civil or criminal, in any part of the United States, may, upon the order of the Court, commence and prosecute or defend to conclusion any suit or action, or writ of error, or an appeal to the Circuit Court of Appeals, or to the Supreme Court in such suit or action, including all appellate proceedings, unless the trial court certify in writing that in the opinion of the court such an appeal or writ of error is not taken in good faith, without being required to prepay all fees or costs or for the printing of the record in the appellate court or give security therefor" (36th Statute at Large, 866).

VI.

That the stenographic record of the testimony and proceedings in the lower court covered between 3,500 and 4,000 pages and was transmitted to the Court of Appeals in typewritten form and is now on file with the Clerk of that Court properly certified and attested, and that petitioners are too poor to have the same printed.

VII.

Petitioners show that the Clerk of this Honorable Court refuses to file this application for certiorari, first, because the same was not accompanied by said record; and now claims that because, more than ninety days have passed since the overruling of the motion for rehearing in the United States Circuit Court of Appeals, he can not now file it.

VIII.

These petitioners contend that they did apply as shown herein within the said ninety days for such writ

of certiorari and did everything they could to perfect such application.

IX.

Wherefore, petitioners respectfuly pray that an order be directed to Honorable Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals at New Orleans, directing him to certify and forward forthwith the original typewritten record in the cause of G. T. Bryant et al. vs. United States of America, and that the Clerk of this Honorable Court be directed to file these petitioners' petition for writ of certiorari which has been in his hands since May, 1919.

Respectfully submitted.

R. H. Arnell,

.....

Attorney for Petitioners, G. T. Bryant et al.

Service and copy hereof is hereby acknowledged.

.....

Solicitor General of the United States.

EXHIBITS.

OFFICE OF THE SOLICITOR GENERAL
SG-WJH-WMS.
WASHINGTON, D. C.
May 17, 1919.

W. G. H.
186233-2-25
Wm. H. Atwell, Esq.,
Attorney at Law,
Dallas, Texas.
Sir:

I beg to acknowledge the receipt of your letter of the 10th instant, enclosing copies of your petition for certiorari and brief.

As you request, I am forwarding to the Clerk of the Supreme Court, duly acknowledged, the original copy of the petition.

Respectfully,
ALEX C. KING,
Solicitor General.

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C.
May 27, 1919.

William H. Atwell, Esq.,
Dallas, Texas.
Dear Sir:

Your letter of the 22nd instant was received on the 26th, together with original petition, certified proceed-

ings in the Circuit Court of Appeals, check for $25.00, order for appearance for the petitioner, copies of briefs for the plaintiff in error and defendant in error in the court below, and certificate of Mr. Mortimer in regard to said briefs, in the case of G. T. Bryant et al., petitioners, vs. the United States, and I have telegraphed you that the case could not be docketed without a complete certified copy of the record as required by the rules. I will hold the papers above acknowledged until the receipt of the record, as required by the rules, or you present your application to the court for an order directing the clerk of the lower court to send up his original files.

Yours, truly,

TFD. JAMES D. MAHER, Clerk.

By W. R. J., Ass't.

COPY

No. 3250.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT.

G. T. BRYANT ET AL.,

Plaintiffs in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

Considering the motion of the plaintiffs in error in the above numbered and entitled cause for a further

stay of the mandate therein, it is ordered that the issue of the mandate in said cause be and it is hereby stayed until the first day of November, 1919, said mandate to be issued upon the expiration of said period unless the petition of the plaintiffs in error for a writ of certiorari shall then have been submitted to the Supreme Court.

June 9th, 1919.

R. W. WALKER,
United States Circuit Judge.

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C.

August 7, 1919.

William H. Atwell, Esq.,
Dallas, Texas.
Dear Sir:

Your letter of the 4th instant, in reference to the case of Bryant vs. The United States, duly received.

I enclose herewith a copy of the Act of September 6, 1916, and call your attention to Section 6 thereof. I do not understand how the staying of the mandate can stop the operation of the statute.

Your truly,
JAMES D. MAHER, Clerk.
By W. R. J., Ass't.

LM.
Enclosure.

The section referred to above reads as follows:

"That no writ of error, appeal, or writ of certiorari intended to bring up any cause for review by the Supreme Court shall be allowed or entertained unless **duly applied for within three months** after the entry of the judgment or decree complained of."

Minnesota State Library,
St. Paul, Minn.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

ARTHUR CRANE

vs.

THE UNITED STATES OF AMERICA.

PETITIONER'S MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS, ETC.

ARTHUR CRANE,
Attorney in Pro. Per.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1919.

ARTHUR CRANE

vs.

THE UNITED STATES OF AMERICA.

PETITIONER'S MOTION.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Arthur Crane, respectfully shows that:

I.

In the Southern Division of the United States District Court for the Northern District of California he was indicted, by an indictment of over 200 folios, with a violation of C. C. U. S. 215, in that he "was the author of certain books" (not specified or identified) and "pretended to be a public philanthropist" and "represented that he was an attorney of the Supreme Court of the United States" and devised a scheme to defraud "by means of hypocritical religion." There was no direct allegation that said or any representation was untrue and fraudulent, leaving same to be inferred. Defendant entered four pleas: "No jurisdiction" (because

Post Office Department had already tried and acquitted him of same charge and alleged offense): "Former Acquittal," "Once in Jeopardy," and "Not Guilty." The trial Judge (Hon. Maurice T. Dooling) held that defendant had a right to jury trial on the plea of "Not Guilty" only, and sustained a general demurrer to the other pleas, notwithstanding that defendant had been tried and acquitted by the Post Office Department of the same charge and alleged offense.

At the trial the defendant was convicted and sentenced to two years' imprisonment, and prosecuted his Writ of Error to the U. S. Circuit Court of Appeals for the Ninth Circuit, which court, on July 7, 1919, affirmed the judgment, and on October 14, 1919, denied his application for rehearing.

Thereafter, to wit, October 22, 1919, a petition for writ of certiorari, together with written appearance of counsel and the sum of $25, was tendered to the clerk of this honorable court. Said petition was without the printed certified copy of the record required by the rules, and said clerk for said reason, and no other, refused to file same or accept said filing fee.

The original record in the files of the said Circuit Court of Appeals is very voluminous and your petitioner is now indigent and wholly unable to bear the cost of printing same.

II.

Your petitioner has fully disclosed to counsel all the facts of said case, and has been by him advised and verily believes that he has a meritorious case for the writ of certiorari therein prayed for, and more especially in the following particulars:

(*a*) The jurisdiction of the Circuit Court of Appeals, as well as of the court below, was called in question and should have been ousted, for the reason that another department of the Government of the United States, to wit, the Post Office Department, had already assumed and fully exercised juris-

diction by trying defendant on the same charge, for the same alleged crime, and by acquitting him thereof.

(*b*) The opinion in petitioner's case conflicts in its statement of law with doctrines laid down in other jurisdictions. For example, said opinion holds, decides, or assumes all the following doctrines, which your petitioner is so as aforesaid advised are erroneous and conflict in statement of law with the doctrines of other jurisdictions:

Jurisdiction.—Between departments of the Government.—

The Circuit Court of Appeals has jurisdiction to affirm a conviction of the District Court, even though another department of the Government (The Postmaster General) had previously taken jurisdiction of the same alleged offense and had tried and acquitted the defendant.

Pleading.—In an indictment for devising a scheme to obtain money fraudulently by sending through the U. S. mails a book alleged to contain false and hypocritical doctrines, the fraud, and hypocritical nature of the doctrines may be inferred and do not need to be directly alleged.

Trial by Jury.—Where a defendant enters pleas of "Not Guilty," "Former Acquittal" and "Once in Jeopardy," he is not entitled, as a matter of right, to a trial by jury, except on the plea of "Not Guilty."

Evidence.—Although defendant was charged with bad faith in his religious teachings, it was no error to exclude testimonials and newspaper endorsements which he had received and which were of such a nature that good faith might manifestly be predicated upon them.

Instructions.—Defendant has no absolute right to have the jury instructed on the theory of his defense, and the omission of such instruction is not reversible error.

(*c*) The indictment was wholly insufficient, in that the alleged crime was only suggested by inference, and it was not even stated which of defendant's books, containing "false and hypocritical doctrines," he was accused of sending through the United States mails. It was, for example, alleged that defendant represented himself to be a counsellor of the Supreme Court of the United States, leaving it to be inferred that such representation was false, whereas, as the district attorney must have known, said representation was true in fact.

(*d*) The refusal of the court below to allow a bill of particulars, stating which book or books were referred to in the indictment, was a gross abuse of discretion.

(*e*) That defendant should be imprisoned for believing and teaching certain religious doctrines (alleged in indictment to be false and hypocritical) is contrary to the Constitution of the United States and to the spirit of American traditions.

III.

Your petitioner has no money or property, and can give no security with which to carry on or proceed in the matter of said petition, and your petitioner is unable, by reason of his poverty, to proceed in said matter.

Wherefore your petitioner prays that this honorable court do permit and allow him to proceed in said matter, *in forma pauperis*, and authorize the original record to be sent up from said Circuit Court of Appeals.

ARTHUR CRANE,
Petitioner in Pro. Per., and
Counsel of this Honorable Court.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Arthur Crane, being first duly sworn, deposes and says: I am the petitioner named in and making the foregoing petition; I have read the same and know the contents thereof and the same is true to my own knowledge.

ARTHUR CRANE.

Subscribed and sworn this — day of October, 1919, before me.

WM. R. STANSBURY,
Notary Public, District of Columbia.

Service and copy hereof is hereby acknowledged.

Solicitor General of the United States.

Minnesota State Library,
St. Paul, Minn.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. , Original.

WILLIAM DUHNE, Complainant,

vs.

THE STATE OF NEW JERSEY ET AL., Defendants.

MOTION TO FILE ORIGINAL BILL

and

ORIGINAL BILL OF COMPLAINT.

EDWARD HOLLANDER,
Attorney for Complainant.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. , Original.

WILLIAM DUHNE, COMPLAINANT,

vs.

THE STATE OF NEW JERSEY ET AL., DEFENDANTS.

MOTION TO FILE ORIGINAL BILL.

Now comes William Duhne, through his attorney, Edward Hollander, and moves the Court for leave to file the bill of complaint herewith exhibited, in a controversy which has arisen between the complainant and the defendants with regard to the enforcement of the Eighteenth Amendment to the Constitution of the United States and the act of Congress of October 28, 1919, known as the National Prohibition Act, and that proper process may issue thereon, notifying the defendants and each of them that such a bill has been filed and that said defendants and each of them may appear and defend same.

WILLIAM DUHNE,
By EDWARD HOLLANDER,
Attorney.

IN THE

SUPREME COURT OF THE UNITED STATES.

IN EQUITY.

WILLIAM DUHNE, COMPLAINANT,

against

THE STATE OF NEW JERSEY, A. MITCHELL PALMER, ATTORNEY GENERAL OF THE UNITED STATES; JOSEPH L. BODINE, UNITED STATES ATTORNEY IN AND FOR THE DISTRICT OF NEW JERSEY, AND DANIEL C. ROPER, COMMISSIONER OF INTERNAL REVENUE OF THE UNITED STATES, DEFENDANTS.

BILL OF COMPLAINT.

To the Honorable the Justices of the Supreme Court of the United States:

The complainant for his bill of complaint herein, by Edward Hollander, his solicitor, respectfully alleges as follows:

I.

The complainant is a citizen of and a resident of the State and district of New Jersey.

II.

The State of New Jersey is a sovereign State and one of the United States of America.

III.

The defendant A. Mitchell Palmer is the Attorney General of the United States of America.

IV.

The defendant Joseph L. Bodine is the United States attorney in and for the district of New Jersey.

V.

The defendant Daniel C. Roper is the Commissioner of Internal Revenue of the United States of America.

VI.

The complainant is and has been for many years engaged in the business of selling at retail beer, wine, and other malt, vinous, and spirituous liquors and intoxicating liquors, for beverage purposes at No. 5160 Hudson Boulevard, in the town of West New York, county of Hudson, State and district of New Jersey, and purposes and intends to continue said business for a further period of many years at said address. He has conducted his business aforesaid under and in accordance with licenses duly had and obtained from the State of New Jersey and from the United States of America, respectively.

VII.

On or before the 19th day of December, 1917, the Congress of the United States adopted a joint resolution proposing an amendment to the Constitution of the United States in words and figures as follows:

> *"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein),* That the following amendment to the Constitution be and hereby is, proposed to the States, to become valid as a part of the Constitution when ratified by the legislatures of the several States as provided by the Constitution:
>
> "'ARTICLE * * *
>
> "Section 1. After one year from the ratification of this article, the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.
>
> "Section 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.
>
> "Section 3. The article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.'"

VIII.

The resolution aforesaid was not adopted by the vote of two-thirds of both houses of the Congress aforesaid, that is to say, two-thirds of the members chosen every second year in

the House of Representatives by the people of the several States, and two-thirds of the Senators elected by the people of the several States; but nevertheless it was communicated to the legislatures thereof, and thereafter and at divers times between the said 19th day of December, 1917, and the 28th day of October, 1919, the legislatures of all the States in the Union, except the States of Connecticut, New Jersey, and Rhode Island, adopted resolutions purporting to ratify and adopt the resolution of Congress aforesaid as an amendment to, and a part of, the Constitution of the United States, but the said States of Connecticut, New Jersey, and Rhode Island, have hitherto refused to adopt any such resolution.

IX.

If the proposed amendment aforesaid had been lawfully proposed by the Congress and ratified by the legislatures of the several States it would have been and become, and would now be, the Eighteenth Amendment to the Constitution of the United States.

X.

Your petitioner is further advised by counsel and verily believes, and upon such information and belief alleges, that neither the people of the United States, nor any of them, nor their representatives in Congress assembled, nor any of them, nor the peoples of the several States, nor any of them, nor their representatives in the several legislatures thereof assembled, nor any of them, ever had, or now have, any authority or lawful power to propose, ratify or adopt the so-called Eighteenth Amendment to the Constitution of the United States, and that the said so-called Eighteenth Amendment is null, void, and of none effect, in law or otherwise, as an amendment to the Constitution of the United States of America, as will more particularly appear from the following

enumeration of the limitations upon their several powers which impliedly but necessarily exist and inhere in the federal and the republican form of the governments of the United States and of the several States, and of the limitations upon their said several powers, which have been expressly declared and ordained by the peoples of the United States and the several States in their several Federal and State constitutions.

LIMITATIONS.

Impliedly But Necessarily Existing in the Federal Form of Government.

A.

In a federal union of sovereign States the sovereign rights, liberties and powers of the several States are wholly reserved to the States, except in so far as they may be expressly prohibited to the States or delegated to the Union by the covenant of union, and the sovereign rights, liberties, and powers so reserved cannot be taken, impaired or abridged, and the covenant of union cannot be so amended as to take, impair or abridge them, without the unanimous consent of each and all of the States so federated. Until unanimous consent is so obtained, as aforesaid, the covenant of union is not so amended, even as to the consenting States, by any act of any number of the members of the union, even the largest majority.

The so-called Eighteenth Amendment assumes to impair and abridge the sovereign rights, liberties and powers of the several States of the United States, in that it assumes to enable the United States to exercise sovereign powers of internal government and police within the territorial jurisdiction of all the States, although their unanimous consent thereto has not been first had and obtained.

By reason of the premises the so-called Eighteenth Amendment is null, void, and of none effect, in law or otherwise, and has not been, and is not now, an amendment to, or part of, the Constitution of the United States.

LIMITATIONS

Impliedly But Necessarily Existing in a Republican Form of Government.

B.

Absolute and arbitrary power over the rights and liberties of the people exists nowhere in a republic, not even in the largest majority. Each and all of the people thereof possess and enjoy certain natural and inherent rights and liberties which are inalienable by their own act and which cannot be taken from them without their consent by the act of others. In uniting to form a republic the people do not surrender, waive, or in anywise diminish, either their rights or their liberties. On the contrary, a republican form of government is formed and exists solely for the purpose of protecting them in the enjoyment thereof. In a republic, therefore, the natural and inherent rights and liberties of the people are necessarily excepted out of the general powers of government and remain at all times indestructible.

Among the rights and liberties so possessed, reserved and enjoyed by the people in a republic are these:

1. The liberty to use their natural powers and to gratify their natural desires in the pursuit of happiness, in so far as injury to others shall not result therefrom;

2. The right to be heard in their own behalf before an impartial and competent tribunal or court whenever their liberties or rights shall be in question (due process of law);

3. The right to be justly compensated when their private property is taken, or destroyed, or in anywise injured or impaired, for a public purpose or for the public benefit.

The so-called Eighteenth Amendment is repugnant to, and violative of, all the rights and liberties herein enumerated, in that it assumes to deprive all the people of the United States and of the several States thereof of the liberty to use alcoholic beverages in moderation and sobriety and under circumstances in which no injury results, or can result, to others therefrom, and in that it assumes to deny to all the people of the United States and of the several States thereof the right to be heard before an impartial and competent tribunal or court in behalf of their liberty to use alcoholic beverages when that liberty is in question, and in that vast investments of private property lawfully made by many of the people in the production and distribution of alcoholic beverages, and oftentimes made by them under the express sanction and license of the people of the United States and of the several States thereof, will be injured, impaired, or utterly destroyed for an alleged public benefit without any compensation whatsoever.

By reason of the premises the so-called Eighteenth Amendment is beyond any lawful power or authority *(ultra vires)* resident in the people of the United States, or in the peoples of the several States thereof, or even in the largest majority thereof, and is, therefore, null, void, and of none effect, in law or otherwise, and has not been, and is not now, an amendment to, or part of, the Constitution of the United States.

C.

In a republic the legislators thereof are the trustees and servants of the people whom they represent, and possess no powers which are not possessed by the people themselves.

The so-called Eighteenth Amendment is, as has been hereinbefore and in paragraph B hereof more fully set forth, repugnant to, and violative of, all the rights hereinbefore and in paragraph B enumerated, and is therefore in excess of the powers of the people of the United States and of the peoples of the several States.

By reason of the premises the act of the Senators and members of the House of Representatives of the Congress of the United States in assuming to propose, and the act of the legislators of the several States in assuming to ratify, the so-called Eighteenth Amendment, being in excess of the powers of the people of the United States and of the peoples of the several States thereof, was in excess of their own delegated powers, and as such was null, void and of none effect, and the so-called Eighteenth Amendment was never lawfully proposed by the Congress of the United States or lawfully ratified by the legislatures of the several States, and has not been, and is not now, an amendment to, or part of, the Constitution of the United States.

D.

In a republic the legislators thereof are the trustees and servants of the people and act only with a delegated authority. No arbitrary or absolute powers of government are delegated to them, and no power is delegated to them to injure, impair, or abridge the natural and inherent rights of the peoples whose delegates they are. In particular no power or authority is delegated to them to injure, impair, or abridge the natural and inherent rights and liberties of the people hereinbefore and in paragraph B hereof enumerated.

The so-called Eighteenth Amendment is, as has been hereinbefore and in paragraph B hereof more fully set forth, repugnant to, and violative of, all the rights and liberties of the people hereinbefore and in paragraph B hereof enumerated.

By reason of the premises the act of the several members of the Congress of the United States and of the several legislators of the several States in assuming to propose and ratify the so-called Eighteenth Amendment and thereby to injure, impair and abridge the natural and inherent rights of the peoples whom they represented was beyond their lawful power and delegated authority *(ultra vires)* and was, therefore, null, void and of none effect, and the so-called Eighteenth Amendment was never lawfully proposed, ratified, or adopted by them, or any of them, and never became, and is not now, an amendment to, or part of, the Constitution of the United States.

E.

In a republic, wherein the Constitution is written and adopted by the people, the sole power to change their form of government resides solely in the people, and the legislators thereof are clothed with no power or authority, implied or otherwise, to impair or surrender in any particular the lawful and sovereign powers of the several States which they severally represent.

The so-called Eighteenth Amendment assumes to impair and abridge the sovereign powers possessed by the several States, in that it assumes to authorize the United States to exercise sovereign powers of internal government and police within their territorial jurisdiction, and to that extent assumes to operate as a surrender by the several States to the United States of a portion of their sovereign powers.

By reason of the premises the act of the legislators of the several States of the United States, wherein all the constitutions have been written and adopted by the people, in assuming to ratify the so-called Eighteenth Amendment, surrender to the United States the sovereign power to regulate in part the internal government and police of the several States

of the Union, was in excess of their lawful power and authority (*ultra vires*) and was, therefore, null, void and of none effect, and the so-called Eighteenth Amendment was never lawfully ratified by them, or any of them, and never became, and is not now, an amendment to, or part of, the Constitution of the United States.

Limitations Expressly Declared and Ordained in the Constitution of the United States.

F.

The Fifth Article of amendment to the Constitution of the United States declares and ordains that no person shall be deprived of life, liberty, or property without due process of law, and that private property shall not be taken for public use without just compensation, and the Ninth Article of amendment thereto declares and ordains that the enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

The amendments aforesaid were proposed to the several States and were ratified by them after the Constitution had been ratified by the conventions of the several States, and therefore operate as, and have the lawful force and effect of, a limitation upon, and to that extent a repeal of, the powers created and conferred by the Constitution as originally ratified, including in particular the power to amend the Constitution as declared and ordained by the Fifth Article thereof.

The said articles of amendment also operate as, and have the lawful power and effect of, express guarantees of the faith of the people of the United States, and as such cannot be repealed, modified, or limited in any particular, but stand as perpetual guarantees and safeguards of all rights and liberties of the people of the United States expressly enumerated

in the Constitution aforesaid or expressly or impliedly reserved to the people.

Among the rights and liberties so guaranteed to the people of the United States are all the rights hereinbefore and in paragraph B enumerated, to which the so-called Eighteenth Amendment is repugnant and of which it is violative and destructive, as hereinbefore and in said paragraph B more fully set forth.

By reason of the premises the so-called Eighteenth Amendment is in excess of any lawful power or authority (*ultra vires*) now resident in the people of the United States, or now resident in the peoples of the several States, or now resident in the Senators or members of the House of Representatives of the United States, or the legislatures of the several States, in that it exceeds the power of amendment reserved in the Constitution, and in that it assumes to repeal the irrepealable guarantees of the people of the United States, and is therefore null, void, and of none effect, in law or otherwise, and was not, and is not now, an amendment to, or part of, the Constitution of the United States.

G

The Fourteenth Article of amendment to the Constitution of the United States declares and ordains that no State shall deprive any person of life, liberty or property without due process of law, and thereby operates as a limitation upon the power and authority of the several States and of the peoples and legislators thereof.

The so-called Eighteenth Amendment is repugnant to, and violative of, the right of the people of the United States and of the several States to be heard in their own behalf before an impartial and competent tribunal or court whenever their liberties or rights shall be in question, and therein

assumes to deprive them of their liberty and property without due process of law.

By reason of the premises, the so-called Eighteenth Amendment is in excess of any lawful power or authority (*ultra vires*) resident in the peoples of the several States, or in their legislatures, and the attempted ratification thereof by the legislatures of the several States was and is null, void, and of none effect in law or otherwise, and the so-called Eighteenth Amendment was not, and is not now, an amendment to, or part of, the Constitution of the United States.

H.

The Fourteenth Article of amendment to the Constitution of the United States declares and ordains that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.

Among the privileges and immunities of citizens of the United States are the rights guaranteed to them and protected by the Fifth Article of amendment to the Constitution and the Ninth Article of amendment to the Constitution, and include all the rights hereinbefore and in paragraph B hereof enumerated, and the so-called Eighteenth Amendment is, as has been herein[1]efore and in paragraph B hereof more fully set forth, repugnant to, and violative of, all the rights aforesaid.

By reason of the premises the so-called Eighteenth Amendment is in excess of any lawful power or authority (*ultra vires*) resident in the peoples of the several States, or in the legislatures thereof, and the attempted ratification thereof by the legislatures of the several States was and is null, void and of none effect, in law or otherwise, and the so-called Eighteenth Amendment was not, and is not now, an amendment to, or part of, the Constitution of the United States.

I.

The Constitution of the United States in the third section of the Sixth Article thereof, requires the Senators and Representatives of the Congress of the United States and the members of the several State legislatures to be bound by oath or affirmation to support the Constitution of the United States, and thereby establishes the ultimate measure and limit of their lawful power and delegated authority.

The so-called Eighteenth Amendment is repugnant to, and subversive of, the sovereign powers of the several States and the natural and inherent rights and liberties of the people thereof, as declared and ordained in, and guaranteed by, the Constitution, and therefore the attempt to propose and ratify it as an amendment to the Constitution was an act, not in support of the Constitution, but in derogation and destruction of it and of the guaranties which it contains.

By reason of the premises the act of the several Senators and members of the House of Representatives of the Congress of the United States and of the several members of the legislatures of the several States in voting to propose the so-called Eighteenth Amendment to the States or to ratify it, was a violation of their oath of office, and in excess of their lawful power and delegated authority, and as such was null, void and of none effect, and the so-called Eighteenth Amendment was never lawfully proposed by the Congress of the United States or lawfully ratified by the legislatures of the several States, and was not, and is not now, an amendment to, or part of, the Constitution of the United States.

J.

The Constitution of the United States in the fourth section of the Fourth Article thereof declares and ordains that

the United States shall guarantee to every State in the Union a republican form of government.

No State possesses a republican form of government in which any part of the people, even the largest majority, possesses absolute or arbitrary power over the lives, liberties, or property of any other part of the people thereof.

No State possesses a republican form of government in which the powers of the legislatures thereof exceed the powers of the people, or in which the legislators possess any powers other than those delegated to them by the people.

No State possesses a republican form of government in which the natural and inherent right of the people as hereinbefore and in paragraph B hereof enumerated may be lawfully injured, impaired or abridged.

The so-called Eighteenth Amendment is in excess of the powers of any part of the peoples of the several States, even the largest majority thereof, and in excess of the powers delegated to the several legislatures thereof, and assumes to impair and abridge all the natural and inherent rights of the peoples of the several States as hereinbefore and in paragraph B hereof enumerated, and as such is repugnant to, and violative of, the principles of a republican form of government, and is therefore in violation of the guarantee of the United States to the several States of a republican form of government.

By reason of the premises the so-called Eighteenth Amendment was not, and is not now, an amendment to, or part of, the Constitution of the United States.

K.

The Tenth Article of amendment to the Constitution of the United States declares and ordains that the powers not delegated to the United States nor prohibited by it to the States, are reserved to the States respectively or to the people.

The amendment aforesaid was proposed to the several States and was ratified by them after the Constitution had been ratified by the conventions of the several States, and therefore operates as, and has the lawful power and effect of, an express guarantee of the faith of the people of the United States to the several States, and as such cannot be repealed or modified or limited without the unanimous consent of each and all of the States of the Union, even as to the consenting States, but stands as a perpetual guarantee and safeguard of all their sovereign powers not previously delegated to the United States or prohibited to the States respectively.

Among the sovereign powers not so delegated or prohibited is the sovereign power of internal government and police within their territorial limits.

The so-called Eighteenth Amendment assumes to delegate to the United States concurrent powers of internal government and police within the territorial jurisdiction of all the States, although their unanimous consent thereto has not been first had and obtained.

By reason of the premises the so-called Eighteenth Amendment is null, void and of none effect, and has not been, and is not now, an amendment to, or part of, the Constitution of the United States.

L.

The Constitution of the United States in Article Five thereof declares and ordains that the Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments thereto. Two-thirds of both houses of Congress, that is to say, two-thirds of the members chosen every second year for the House of Representatives by the people of the several States and two-thirds of the Senators chosen from the several States, have not deemed it necessary to propose, and have not proposed, the so-called Eighteenth Amendment to the several States.

By reason of the premises the so-called Eighteenth Amendment was never lawfully proposed by the Congress of the United States to the several States or lawfully ratified by the legislatures of the several States, and was not, and is not now, an amendment to, or part of, the Constitution of the United States.

Limitations Expressly Declared and Ordained in the State Constitutions.

M.

As will more particularly and at large appear by reference thereto, the peoples of the States of Kentucky and Wyoming in the constitutions of their respective States have declared and ordained that absolute and arbitrary power over the lives, liberty and property of the peoples thereof exists nowhere in their States, not even in the largest majority.

The so-called Eighteenth Amendment is repugnant to, and violative of, all the rights and liberties hereinbefore and in paragraph B hereof enumerated, and as such is an exercise of absolute and arbitrary power over the lives, liberty and property of the peoples of the States aforesaid.

By reason of the premises neither the peoples of the States aforesaid, nor their several legislators in legislature assembled, had or possessed any authority or lawful power to ratify the so-called Eighteenth Amendment aforesaid, and the attempted ratification thereof by the legislatures of the States aforesaid was and is null, void, and of none effect, in law or otherwise, anything in the constitutions of the said States contained to the contrary thereof in anywise notwithstanding.

N.

As will more particularly and at large appear by reference thereto, the peoples of the States of Alabama, Arizona, Ar-

kansas, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia and Wyoming, in the constitutions of their respective States, have declared and ordained that no person shall be deprived of life, liberty or property without due process of law.

The so-called Eighteenth Amendment is repugnant to, and violative of, the constitutional limitation aforesaid, in that it denies to the peoples of the several States aforesaid the right to be heard before an impartial and competent tribunal or court in behalf of their liberty to use alcoholic beverages when that liberty is in question, and therein assumes to deprive them of their liberty and property without due process of law.

By reason of the premises neither the peoples of the States aforesaid, nor their several legislators in legislature assembled, had or possessed any authority or lawful power to ratify the so-called Eighteenth Amendment aforesaid, and the attempted ratification thereof by the legislatures of the States aforesaid was and is null, void, and of none effect, in law or otherwise, anything in the constitutions of the said States contained to the contrary thereof in anywise notwithstanding.

O.

As will more particularly and at large appear by reference thereto, the peoples of the States of Alabama, Arkansas, Delaware, Kentucky, North Dakota, Pennsylvania, Tennessee and Texas, in the constitutions of their respective States, have declared and ordained that the natural and inherent rights of the people are excepted out of the general powers of government and shall forever remain inviolate.

The so-called Eighteenth Amendment is repugnant to, and violative of, all the natural and inherent rights and liberties hereinbefore and in paragraph B hereof enumerated, and assumes to include them within the general powers of government, and as such is a violation of the rights in the several constitutions of the States aforesaid excepted out of the powers of government and declared to be forever inviolate.

By reason of the premises neither the peoples of the States aforesaid, nor their several legislators in legislature assembled, had or possessed any authority or lawful power to ratify the so-called Eighteenth Amendment aforesaid, and the attempted ratification thereof by the legislatures of the States aforesaid was and is null, void, and of none effect, in law or otherwise, anything in the constitutions of the said States contained to the contrary thereof in anywise notwithstanding.

P.

As will more particularly and at large appear by reference thereto, the peoples of the States of Alabama, Arizona, Arkansas, Florida, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Utah, Vermont, West Virginia, and Wyoming, in the constitutions of their respective States, have declared and ordained that private property shall not be taken for a public use without just compensation.

The so-called Eighteenth Amendment assumes to take or impair the private property of the peoples of the several States for a public purpose or for the public benefit, in that vast investments of private property lawfully made in the production and distribution of alcoholic beverages, and oftentimes made under their express sanction and license,

will be injured, impaired or utterly destroyed for the alleged benefit of the people without any compensation whatsoever.

By reason of the premises neither the peoples of the States aforesaid, nor their several legislators in legislature assembled, had or possessed any authority or lawful power to ratify the so-called Eighteenth Amendment aforesaid, and the attempted ratification thereof by the legislatures of the States aforesaid was and is null, void, and of none effect, in law or otherwise, anything in the constitutions of the said States contained to the contrary thereof in anywise notwithstanding.

Q.

As will more particularly and at large appear by reference thereto, the peoples of the States of Alabama, Arkansas, California, Colorado, Delaware, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Massachusetts, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Utah, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming, in the constitutions of their respective States have declared and ordained that all men are free and independent; that they are endowed with certain inalienable rights; and that among those rights are life, liberty and the pursuit of happiness.

The so-called Eighteenth Amendment is repugnant to, and violative of, all the natural, inherent, and inalienable rights and liberties hereinbefore and in paragraph B hereof enumerated, and as such assumes to deprive the peoples of the several States aforesaid of the rights and liberties so declared to be inalienable.

By reason of the premises neither the peoples of the States aforesaid nor their several legislators in legislature assembled, had or possessed any authority or lawful power to ratify the so-called Eighteenth Amendment aforesaid, and

the attempted ratification thereof by the legislatures of the States aforesaid was and is null, void, and of none effect, in law or otherwise, anything in the constitutions of the said States contained to the contrary thereof in anywise notwithstanding.

R.

As will more particularly and at large appear by reference thereto, the peoples of the States of Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Iowa, Kansas, Louisiana, Maine, Maryland, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Carolina, Ohio, Oklahoma, Utah, Virginia, Washington, and Wyoming, in the constitutions of their respective States have declared and ordained that the enumeration therein of certain rights shall not impair or deny others retained by the people.

The so-called Eighteenth Amendment is repugnant to, and violative of, all the natural and inherent rights and liberties hereinbefore and in paragraph B hereof enumerated, and as such assumes to deprive the people of the States aforesaid of the rights and liberties so declared in their constitutions aforesaid to have been retained by them.

By reason of the premises neither the peoples of the States aforesaid nor their several legislators in legislature assembled, had or possessed any authority or lawful power to ratify the so-called Eighteenth Amendment aforesaid, and the attempted ratification thereof by the legislatures of the States aforesaid was and is null, void, and of none effect, in law or otherwise, anything in the constitutions of the said States contained to the contrary thereof in anywise notwithstanding.

S.

As will more particularly and at large appear by reference thereto, the peoples of the States of Arizona, California,

Colorado, Georgia, Idaho, Maryland, Mississippi, Nevada, New Mexico, North Carolina, North Dakota, Oklahoma, South Dakota, Utah, Washington, West Virginia and Wyoming, in the constitutions of their respective States have declared and ordained that the provisions of the Constitution of the United States are the supreme law within their several States.

The so-called Eighteenth Amendment is repugnant to, and violative of, all the guaranties of rights and liberties declared and ordained by the Constitution of the United States aforesaid, as hereinbefore and in paragraphs F to K hereof more particularly and at large set forth.

By reason of the premises neither the peoples of the States aforesaid, nor their several legislators in legislature assembled, had or possessed any authority or lawful power to ratify the so-called Eighteenth Amendment aforesaid, and the attempted ratification thereof by the legislatures of the States aforesaid was and is null, void, and of none effect, in law or otherwise, anything in the constitutions of the said States contained to the contrary thereof in anywise notwithstanding.

T.

As will more particularly and at large appear by reference thereto, the peoples of the States of Georgia, Maryland, Vermont, Virginia, and West Virginia, in the constitutions of their respective States have declared and ordained that their representatives in their several legislatures assembled are the trustees and servants of the people and amenable to them.

The so-called Eighteenth Amendment is repugnant to, and violative of, all the natural and inherent rights and liberties of the peoples of the several States aforesaid hereinbefore and in paragraph B hereof enumerated, and as such the act of the several legislatures aforesaid in attempting to ratify it was a betrayal of the rights of the peoples of the said

several States, and a breach of the fiduciary and representative obligations imposed upon them by the several constitutions aforesaid, and as such was in excess of the delegated powers conferred upon them.

By reason of the premises the legislatures of the several States aforesaid did not have or possess any authority or lawful power to ratify the so-called Eighteenth Amendment aforesaid, and the attempted ratification thereof by the legislatures of the States aforesaid was and is null, void, and of none effect, in law or otherwise, anything in the constitutions of the said States contained to the contrary thereof in anywise notwithstanding.

U.

As will more particularly and at large appear by reference thereto, the peoples of the States of Georgia, Maryland, Massachusetts, Missouri, Montana, New Hampshire, New Mexico, North Carolina, Texas, Vermont and Washington, in the constitutions of their respective States, have declared and ordained that the people thereof have the inherent, sole and exclusive right of regulating their internal government and the police thereof.

The so-called Eighteenth Amendment assumes to delegate to the United States concurrent powers of internal government and police within the territorial limits of the States aforesaid, and as such is repugnant to, and violative of, the inherent, sole and exclusive right of the peoples of the States aforesaid to regulate the internal government and police thereof.

By reason of the premises the legislatures of the several States aforesaid did not have or possess any authority or lawful power to ratify the so-called Eighteenth Amendment aforesaid, and the attempted ratification thereof by the legislatures of the States aforesaid was and is null, void, and of none effect, in law or otherwise, anything in the constitu-

tions of the said States contained to the contrary thereof in anywise notwithstanding.

V.

As will more particularly and at large appear by reference thereto, the peoples of the States of Arizona, Arkansas, California, Colorado, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Texas, Utah, and Washington, in the constitutions of their respective States have reserved to themselves the power within a certain time and at their option to approve or reject at the polls any act of the legislature, and, by reason thereof, until the peoples of the States aforesaid exercise the option so reserved by them, or allow the time reserved therefor to cease and determine, no act of any legislature of the States aforesaid is lawfully complete or operative.

The proclamation and certificate made, issued and published on the 29th day of January, 1919, by Frank L. Polk, as acting Secretary of State of the United States, exercising the powers of that office in the place and stead of Robert Lansing, Secretary of State, who on the day aforesaid was absent from the United States, was made, issued and published before the peoples of the several States aforesaid had exercised their option to reject at the polls the act of their legislatures in ratifying the so-called Eighteenth Amendment and before the time reserved by them for exercising their option had ceased or determined.

By reason of the premises the ratification by the legislatures of the States aforesaid of the so-called Eighteenth Amendment was not, and had not then become, lawfully complete or operative as an act of ratification, and the certificate of proclamation of said Frank L. Polk, acting Secretary of State as aforesaid, was contrary to the law and the fact, and null, void, and of none effect, in law or otherwise.

XI.

Prior to the 28th day of October, 1919, a bill entitled "An act to prohibit intoxicating beverages and to regulate the manufacture, production, use and sale of high proof spirits for other than beverage purposes and to insure an ample supply of alcohol and promote its use in scientific research and in the development of fuel, dye and other lawful industries," which had theretofore passed the House of Representatives and the Senate, and which was intended to enforce the so-called Eighteenth Amendment aforesaid, was presented to the President of the United States for his approval, but the President returned it with his objections to that house in which it originated, to wit, the House of Representatives.

XII.

Thereafter, but still prior to the 28th day of October, 1919, the House of Representatives, after having entered the objections of the President at large on their journal, proceeded to reconsider it, but after such reconsideration two-thirds of that house, to wit, two-thirds of the members chosen therefor every second year by the people of the several States, failed to agree to pass the bill, but nevertheless it was sent with the President's objections to the other house, to wit, the Senate, by which it was on the 28th day of October, 1919, reconsidered and approved by two-thirds of that house, to wit, two-thirds of the Senators from each State, elected by the people thereof.

XIII.

In and by the bill aforesaid it is provided that no person shall on or after the date when the Eighteenth Amendment to the Constitution of the United States, that is to say, the

so-called Eighteenth Amendment hereinbefore set forth at large, goes into effect, manufacture, sell, barter, transport, export, deliver, furnish, or possess any intoxicating liquor except as therein authorized, and the said bill contains numerous other intended provisions of law, both civil and criminal, looking to the enforcement of its prohibitions aforesaid.

XIV.

The complainant is advised by counsel and verily believes, and on such information and belief alleges, that the bill aforesaid was not within the lawful power or authority of the Congress of the United States to enact and never became and is not now a law.

XV.

In and by the bill aforesaid, the defendants and each of them were and are charged with the duty of enforcing its provisions within the State of New Jersey and the district of New Jersey, and the defendants A. Mitchell Palmer and Joseph L. Bodine and each of them are charged with the duty of enforcing within the State of New Jersey and the district of New Jersey the civil and criminal law of the United States of America in so far as it is prescribed and regulated by the terms and provisions of the several statutes of the United States of America.

XVI.

The defendants and each of them, except the defendant, the State of New Jersey, threaten and are about to enforce against the complainant and his agents and employees the terms and provisions of the bill aforesaid, to subject the complainant and his agents and employees to criminal prosecution, to seize, confiscate, and destroy certain property of

complainant, including alcoholic liquors now in his possession and belonging to him, to take proceedings to have the premises occupied by complainant in his business as aforesaid declared a common nuisance, to obtain an injunction against said premises and this complainant, restraining and enjoining him from engaging in his said business at said premises and to prevent complainant and his agents and employees from engaging in and pursuing the said business of selling alcoholic and intoxicating liquors at retail at such premises, and in other respects to interfere with complainant and his agents and employees in the transaction of said business, and to wholly prevent complainant, his agents and employees from operating and continuing said business at said premises.

XVII.

There is grave danger that the defendant the State of New Jersey may against its will and by force of arms or otherwise be compelled to aid and assist the defendants A. Mitchell Palmer, Daniel C. Roper and Joseph L. Bodine in the attempted enforcement of the bill aforesaid, and of the so-called Eighteenth Amendment to the Constitution of the United States, all in violation of its sovereign rights guaranteed to it as a sovereign State by the Constitution of the United States.

XVIII.

The enforcement of the bill aforesaid or of the alleged Eighteenth Amendment to the Constitution of the United States aforesaid, and even the mere attempt to enforce either of them, by the defendants or any of them will cause direct and irreparable loss of property and damage to the complainant and to his property rights in that it will prevent

him from continuing his said business, will frighten and terrorize his employees and others so that it will be impossible for him to obtain new employees, will cause him to lose his customers and the profits he could make on sales of his goods, will destroy the good-will of his said business, will depreciate and destroy the value of his property, including the licenses heretofore paid for and obtained by him from the United States and from the State of New Jersey, and otherwise will cause him irreparable loss and damage for which he will have no adequate or sufficient remedy at law or otherwise.

XIX.

The complainant has in his possession a large and valuable stock of merchandise consisting of alcoholic and intoxicating liquors worth several thousand dollars, on which he has paid a stamp tax and other taxes of the United States of America, all of which will be rendered valueless unless the defendants and each of them are at once enjoined as prayed herein.

XX.

Unless the defendants and each of them are restrained from bringing proceedings against the complainant, his agents and employees, to enforce the act of Congress aforesaid and the alleged Eighteenth Amendment to the Constitution of the United States aforesaid, many actions and proceedings will result and will be brought, in all of which actions and proceedings the constitutionality and validity of the said act of Congress of October 29, 1919, and of the said alleged Eighteenth Amendment to the Constitution of the United States must be determined, which issue can and will be most properly and finally decided in this action.

XXI.

The complainant has no adequate or sufficient remedy at law or equity or otherwise in the premises.

To the end, therefore, of avoiding a multiplicity of suits and in order that the complainant may obtain relief in the premises from this honorable Court, where alone adequate relief can be awarded, he prays:

1st. That the State of New Jersey, A. Mitchell Palmer, Attorney General of the United States of America; Joseph L. Bodine, United States attorney in and for the district of New Jersey, and Daniel C. Roper, Commissioner of Internal Revenue of the United States of America, and each of them, may be made defendants to this bill of complaint, and in this proceeding, and compelled to answer the bill of complaint herein, but not under oath, an answer under oath being hereby expressly waived, and every material allegation thereof, as fully and to the same extent as if they and each of them were directly and particularly interrogated as to such allegations.

2nd. That a writ of injunction issue out of and under the seal of this Court restraining and enjoining the said defendants, the State of New Jersey, A. Mitchell Palmer, Attorney General of the United States of America; Joseph L. Bodine, United States attorney in and for the district of New Jersey, and Daniel C. Roper, Commissioner of Internal Revenue of the United States of America, and each of them, their deputies, assistants, agents, officers, officials, and servants, from in any manner enforcing, or attempting to enforce, or causing, permitting or suffering to be enforced, against the defendant, his agents, servants and employees, or any of them, or against any of his property, directly or indirectly,

any of the terms or provisions of the so-called Eighteenth Amendment to the Constitution of the United States, and of the bill to enforce the provisions thereof hereinbefore referred to, and from arresting or prosecuting the complainant or his agents, servants or employees for or on account of any alleged violation by them or any of them, of the terms or provisions of said so-called Eighteenth Amendment to the Constitution of the United States, or of said bill, or either of them, and from filing any information or causing any indictment to be presented against the complainant, his agents, servants or employees, and from in any manner or to any extent seizing, attempting or causing or suffering or permitting to be seized, or otherwise interfered with, the property, business or affairs of the complainant, and from in any manner interfering with the occupation by complainant, his agents, servants and employees or any of them, of the premises at which the complainant is conducting his said business as aforesaid, or any other place within the State of New Jersey at which the complainant, his agents, servants, and employees, may lawfully be conducting the said business, and from using or attempting to use the name or authority of the United States of America or of the State of New Jersey in any proceedings at law or in equity against the complainant in any court of the United States or any court of the State of New Jersey, or either of them, for or on account of any alleged violation of the provisions of said so-called Eighteenth Amendment to the Constitution of the United States or said bill, or either of them.

3rd. That pending this litigation a temporary writ of injunction, restraining the said defendants, the State of New Jersey, A. Mitchell Palmer, Attorney General of the United States of America; Joseph L. Bodine, United States Attorney in and for the District of New Jersey, and Daniel C. Roper, Commissioner of Internal Revenue of the United

States of America, and each of them, their deputies, assistants, agents, officers, officials, and servants, issue as prayed for herein.

4th. That complainant may have such other and further relief as the nature of the case may require and as may be in accordance with equity and good conscience.

5th. That complainant may have not only the writ of injunction conformable to the prayer of this bill, but also that the due process of this Court may issue herein, directed to the said defendants and each of them, directing them and each of them to appear and answer this bill of complaint and to submit themselves to the jurisdiction of this Court, and to do and receive what shall in the premises be just and equitable and to comply in all respects with the orders and directions of this honorable Court in the premises.

EDWARD HOLLANDER,
Solicitor for Complainant,
8 *Bergenline Avenue, Union Hill, New Jersey.*

EVERETT V. ABBOT,
GEORGE W. TUCKER,
BENJAMIN TUSKA,
Of Counsel.

STATE OF NEW JERSEY,
County of Hudson, ss:

William Duhne, being duly sworn, deposes and says that he is the complainant in the above-entitled action in equity; that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be al-

leged on information and belief, and that as to those matters he believes it to be true.

WILLIAM DUHNE.

Sworn to before me this 15th day of December, 1919.

OTTO A. GRIESBACH,

[SEAL.] *Notary Public of N. J.*

[Endorsed:] In the Supreme Court of the United States. William Duhne, complainant, against The State of New Jersey, A. Mitchell Palmer, Attorney General of the United States; Joseph L. Bodine, United States attorney in and for the district of New Jersey, and Daniel C. Roper, Commissioner of Internal Revenue of the United States, defendants. Bill of complaint. Edward Hollander, solicitor for complainant, 8 Bergenline Avenue, Union Hill, New Jersey.

5f

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St. Paul, Minn.

Supreme Court of the United States

WILLIAM DUHNE,
Complainant,

against

THE STATE OF NEW JERSEY and others,
Defendants.

BRIEF FOR COMPLAINANT.

EDWARD HOLLANDER,
Solicitor for Defendants.

EVERETT V. ABBOT,
GEORGE W. TUCKER,
BENJAMIN TUSKA,
of Counsel.

Eric W. Whitfield, New York.

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Supreme Court of the United States

WILLIAM DUHNE,
Complainant,

against

THE STATE OF NEW JERSEY and others,
Defendants.

BRIEF ON BEHALF OF COMPLAINANT

on rule requiring defendants to show cause why the bill should not be filed.

On the 16th day of December, 1919, complainant made application for leave to file a bill against the State of New Jersey and the necessary officers of the United States in a suit to procure an adjudication that the so-called "Eighteenth Amendment" to the Constitution of the United States was invalidly adopted and never became an amendment to, or a part of, the Constitution. The bill asked equitable relief against all the defendants restraining them from taking any steps to enforce the amendment or allowing it to be enforced within the territorial limits of the State of New Jersey.

The Court reserved decision on the motion and thereafter made a rule requiring the defendants to show cause on the 5th day of January, 1920, why the bill should not be filed.

Now, upon the return day of the rule, complainant appears in support of it, and submits this brief to show that the Court has jurisdiction of the subject-matter of the action and of the parties defendant, and that on the merits the bill is good.

POINT I.

The bill is not frivolous. On the contrary, it involves the determination of the most important question that can ever come before this Court, to wit: Is our Government constitutional, or is it more absolute and arbitrary than any known in history?

The legislatures of thirty-six states, acting at the instance of the Congress of the United States, have assumed to ratify a supposed amendment to the Constitution which differs from every other amendment which has been hitherto adopted, in that it assumes to regulate the private life of the citizens of the states within the territorial limits of the states themselves.

If the methods which have been pursued in this procedure are constitutional and valid, then it follows that a bare two-thirds of a bare majority of the membership of the two houses in Congress and a bare majority of a bare majority of the membership of three-fourths of the state legislatures can constitutionally adopt any amendment to the Constitution which they may desire. If opposition develops in the houses of Congress or the state legislatures, the number of votes necessary to adopt any

amendment to the Constitution will only need to be increased to a bare two-thirds of the two houses of Congress and a bare majority of three-fourths of the state legislatures as a maximum. In other words, a group of public officials, which at the maximum may be less than 2,800 and at the minimum may be less than 1,400, hold in their hands the Constitution of the United States and the property, the liberty, and even the lives of one hundred and ten millions of people. Their power, if the "Eighteenth Amendment" has been constitutionally adopted, is absolute and arbitrary beyond that of any group of men known to history.

The bill here offered for filing undertakes to present all the possible grounds for denying the existence of any such absolute and arbitrary power. It is believed that the bill is complete in that particular, and that there are no other valid grounds upon which to assail the "Eighteenth Amendment."

Such a bill cannot possibly be frivolous. On the contrary, it presents the greatest issue that was ever brought before this Court for decision. It presents in fact the question: Have we a Constitution, or have we a government more absolute and arbitrary than any known in history?

POINT II.

The Court has jurisdiction of the subject-matter of the suit. The question involved is justiciable and not political.

It may be objected that the question of the validity of the "Eighteenth Amendment," which is the gravamen of this action, is non-justiciable in its nature, being essentially political, and, therefore, not within the range of judicial inquiry.

We do not apprehend that this objection will be seriously urged. The Constitution of the United States declares in Article III, Section 1, Clause 2 that "the judicial power shall extend to *all* cases, in law and equity, arising under this Constitution." Such a mandate brings every case either at law or in equity "arising under this Constitution" within the judicial power of the nation and, *ex vi termini*, makes it justiciable.

Under the allegations of the bill the question is presented whether the various acts of the Congress of the United States and of the legislatures of the several states are within the powers possessed by the peoples of the United States and of the several states, or delegated to their representatives, under the provisions of the Federal Constitution, and whether the resultant of those acts, to wit, the "Eighteenth Amendment," is in fact an amendment to, or a part of, the Federal Constitution. That these questions arise under the Constitution is self-evident. No argument can be adduced to support the position, nor any adduced to controvert it. It may be said, however, that this Court is continually inquiring into the authority of the Congress and of the state legislatures, as defined and limited by the

Constitutions of the United States and of the several states, and the character of the inquiry demanded in the instant cause differs in no particular from those other inquiries which we have just mentioned. If the ordinary question of the constitutionality of a statute is justiciable, then, by the same token, the question of the validity of this amendment, which turns upon precisely the same considerations, is also justiciable.

POINT III.

The State of New Jersey is a necessary party defendant in this action.

In some high respects, this suit is similar to a bill of interpleader.

Complainant has been all his life accustomed to regard the State of New Jersey as the source of the law which he is to obey, as, in other words, the sovereign whose mandates regulate his conduct in his private life. Now the Federal Government claims the authority, at least in part, to issue similar mandates and to regulate his private conduct and establish the rules which he must obey. He is, therefore, confronted with a double claim to his allegiance, and he seeks in this proceeding in equity to have the claim judicially determined by the only court that can determine it. He seeks in this proceeding to ascertain whether the sovereignty to which he has hitherto given his allegiance has been transferred in part from the state of his citizenship to the United States of America, and to determine that question he must have both parties before the Court. His bill, therefore, is in the nature of a

bill of interpleader with respect to the sovereignty to which primarily he owes his allegiance, and the parties to it represent the two claimants to that sovereignty.

If the bill could have been drawn in the form in which it ought to be drawn, the United States of America would have been one party and the State of New Jersey would have been the other. There is no way, however, by which the United States of America may be made a party defendant, and the only method by which complainant can secure a determination of this question of disputed sovereignty is to join as parties defendant the officers of the United States whose duty it is to assert the sovereignty of the United States, and, having joined them, to show that the sovereignty which they are attempting to assert does not exist, and that consequently their efforts to assert it are *ultra vires*, null and void.

No such difficulty confronts him with reference to the State of New Jersey, and consequently the state is made a party defendant *eo nomine*.

In spite, therefore, of the difference in the character of the defendants, the nature of the bill remains the same: it is an effort by complainant as a citizen of the State of New Jersey to have this Court determine for him whether or not, in the particulars covered by the "Eighteenth Amendment," he is under a duty to obey the mandate of the United States of America or under a duty to obey the mandate of the State of New Jersey. To that controversy the State of New Jersey is indeed a necessary party.

POINT IV.

This Court has jurisdiction of all defendants and the State of New Jersey may be sued in this Court as a sovereign entity.

The real question as to the jurisdiction of this Court is presented by the fact that the State of New Jersey is a party defendant. The correctness of complainant's procedure is determined beyond the possibility of a doubt by the following provisions of the Constitution:

> "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish" (Art. III, Sec. 1).
>
> "The judicial power shall extend to *all* cases, in law and equity, arising under this Constitution" (Art. III, Sec. 2, Clause 1).
>
> "In all cases * * * in which a State shall be a party, the Supreme Court shall have original jurisdiction" (Art. III, Sec. 2, Clause 2).

The question presented by the bill now offered for filing arises under the Constitution. It is, therefore, as we have seen, within the judicial power of the United States and of this Court. A state is a party to it and, therefore, this Court has original jurisdiction, and this bill is an application for relief to the original jurisdiction of this Court. Complainant's bill, therefore, is within the letter of the Constitution.

The letter of the Constitution is a constitutional mandate, absolute, definite and imperative. The

question which complainant raises in his bill is within the judicial power of the United States, and the courts of the United States are not at liberty, in any circumstances whatsoever, to decline the jurisdiction which is confided to them by the Constitution.

So far as complainant has been able to ascertain, this is the first time in the history of this Court in which a citizen of a state has made application to it to exert its jurisdiction against the state of which he is a citizen. There has been a considerable discussion of that point in the decisions, but, because the question has never been presented directly, all the discussion of it necessarily has been *obiter*.

The *dicta* have been in direct and irreconcilable conflict. Sometimes it has been said that a state cannot be sued without its consent, and that, consequently, the constitutional mandate is not applicable to such a case. Sometimes it has been said, to the exact contrary, that the constitutional mandate is imperative, and that in a case in which a constitutional question is presented a state may be sued in this Court without its consent.

The leading case in which the negative of the question has been most carefully considered and upheld is that of

Hans v. *Louisiana*, 134 U. S., 1.

The discussion was clearly *obiter*, because the state was sued in the Circuit Court of the United States for the Eastern District of Louisiana, and the Judiciary Act provided that jurisdiction of the circuit courts should be "concurrent with the courts of the several states." Inasmuch as the state

courts of Louisiana did not have power to entertain a suit against their own state, the Circuit Court had no such power. The opinion, however, went beyond the necessities of the situation and declared that, as a general principle, "the suability of a state without its consent" was a thing unknown to the law.

In support of its position the court made the point that if a state may be constitutionally sued in the Federal courts by its own citizens, although it cannot be sued for a like cause by citizens of other states or of a foreign state, "the result is not less startling and unexpected than the original decision of this court that under the language of the Constitution, and original Act of 1789, a state was liable to be sued by a citizen of another state or of a foreign country." We are not aware, however, that an express mandate of the Constitution, imperative, definite, and absolute, may be disregarded because "the result" of it is startling or unexpected.

The court also cites the remarks of various leading statesmen of the country, including our revered Chief Justice Marshall before he went on the bench, to the effect that "it is inherent in the nature of sovereignty not to be amenable to the suit of an individual without its consent." We do not understand, however, how the discussions of the Constitution at the time when it was submitted to the states for adoption, or when it was being considered in the Constitutional Convention, can lend any assistance to the attempt to modify the express mandate of the Constitution, definite, absolute and imperative.

The contemporary discussions as to the meaning of the Treaty of Versailles will not, for example, be relevant to the determination of its meaning in subsequent years, if it shall ever be adopted. Otherwise, we should have the absurd result that discussions of its meaning taking place in the English, French and Italian Parliaments, oftentimes in a language unknown to a majority of our people, not communicated even to the authorities of this country charged with the duty of ratifying the instrument, can be subsequently adduced in support of an interpretation which is contrary to the express language of the instrument.

Still again, the court says: "It was argued by the opponents of the Constitution that this clause would authorize jurisdiction to be given to the federal courts of individual suits against the state by citizens of another state or of a foreign state. Adhering to *the mere letter*, it might be so; and so, in fact, the Supreme Court held in *Chisholm* v. *Georgia* [2 Dallas, 419]; but looking at the subject as Hamilton did, and as Mr. Justice Iredell did, in the light of history and experience and the established order of things, the views of the latter were clearly right—as the people of the United States in their sovereign capacity subsequently decided."

The "mere letter" of the Constitution is, however, as we have said before, and cannot reiterate too often, an express mandate of the people of the United States, unambiguous, definite and imperative. By it they have commanded their judges to take jurisdiction of certain enumerated classes of suits, and no one of their judges, no one of their courts, is at liberty to decline that jurisdiction.

These are the insubstantial reasons which have been advanced to support the position that this Court has no jurisdiction of a state without its consent, even in a case arising under the Constitution of the United States. Let us turn to the other view.

In the case of

> *Cunningham* v. *Macon & Brunswick Railroad,* 109 U. S., 446, 451,

this Court said:

> "It may be accepted as a point of departure *unquestioned* that neither a state nor the United States can be sued as defendant in any court in this country without its consent, *except in the limited class of cases in which a state may be made a party in the Supreme Court of the United States by virtue of the original jurisdiction conferred on this court by the Constitution.*"

By far the most elaborate and most comprehensive contribution to the discussion has been made by Chief Justice Marshall in a unanimous opinion of this Court in the case of *Cohens* v. *Virginia,* 6 Wheat., 264. In that case he took a position exactly contrary to that which he had advanced before the Virginia Convention as quoted by this Court in *Hans* v. *Louisiana.* Such a complete reversal of views in a jurist of his weight and authority is a striking tribute to the strength of the argument that the Constitution means what it says. Let us quote some of his language. It was, of course, *dictum,* because the decision in that case was that a writ of error to a state court in which

the United States was a party defendant was not a suit against the United States, but its arguments are unanswerable. After quoting the clause which gives the courts of the Union jurisdiction of all cases in law or equity arising under the Constitution, Chief Justice Marshall says:

> "And this clause extends the jurisdiction of the court to all the cases described without making in its terms any exception whatever and without any regard to the condition of the party. *If there be any exception, it is to be applied against the express words of the article*" (p. 338).

Again he says:

> "Are we at liberty to insert in this general grant, an exception of those cases in which a state may be a party? Will the spirit of the Constitution justify this attempt to control its words? They will not. We think a case arising under the Constitution and laws of the United States, is cognizable in the courts of the Union, *whoever may be the parties to that case*" (pp. 382, 383).

He then points out that

> "if jurisdiction depended entirely on the character of the parties, and was not given where the parties have not an original right to come into court, that part of the 2d Section of the 3d Article, which extends the judicial power to all cases arising under the Constitution and Laws of the United States, will be mere surplusage."

Finally he concludes the discussion in these words:

> "After bestowing on this subject the most attentive consideration, the court can perceive no reason founded on the character of the parties for introducing an exception which the Constitution has not made; and we think that the judicial power, as originally given, extends to all cases arising under the Constitution or a law of the United States, *whoever may be the parties*" (pp. 391, 392).

This discussion of Chief Justice Marshall, be it noted, is the only discussion which grounds itself frankly upon the language of the Constitution and which examines the phrases of the Constitution for the purposes of ascertaining its meaning. It is therefore the only discussion which is truly relevant to the purpose. Its conclusion is inexpugnable. It makes clear the fact that the "mere letter" of the Constitution is also its spirit, and that if the court should depart from the letter it would slay the spirit.

Hitherto in our consideration of this question we have assumed that the State of New Jersey has not given, and will not give, its consent to the maintenance of this suit, and we have assumed that the question whether or not the state can be sued without its consent must be answered in the affirmative in order to sustain the jurisdiction of this Court. This assumption, however, has been made merely for the purpose of argument and has been implicit rather than explicit. We desire, however, to point out that our assumption was unnecessary, that the State of New Jersey has already given an irrevocable consent to be sued in this Court, and that it gave that consent when it ratified the Constitution of the United States. In its act of rati-

fication it consented to the establishment of a judiciary system in which should be vested absolute and complete power to determine all cases arising under the Constitution, and it submitted itself to the jurisdiction of the courts established under those constitutional provisions. In particular, it submitted itself to the jurisdiction of this Court in all cases in which it is a party.

Having once given its consent by ratifying the Constitution, it cannot now withdraw that consent without withdrawing from the Union—which it neither attempts, nor desires, to do. Consequently, its ratification of the Constitution is a continuing assent to the jurisdiction of this Court and is a continuing consent to be sued under the original jurisdiction which has been conferred upon this Court by the Constitution.

In conclusion we may observe that complainant asks that the State of New Jersey be restrained from permitting the "Eighteenth Amendment" to be enforced within its territorial limits; in other words, complainant prays for injunctive relief. It asks this relief against the State, its officers, agents and employees, and therefore asks for nothing which is not properly within the powers of a court of equity. It may be that the state could not be punished *as a state* for an infraction of the injunction, if it were issued; but certainly every officer of the state would be guilty of contempt and could be punished as for a contempt under principles of equity jurisprudence which are too elementary to require the citation of authority.

POINT V.

The bill alleges grounds which are sufficient to establish the lack of authority of those members of the legislative bodies which assumed to propose, and assumed to ratify, the "Eighteenth Amendment," and the consequent invalidity of the "Amendment" itself.

There are a number of constitutive principles of government which are so wrought into the fabric of our institutions that they cannot be validly abrogated even by attempts to amend our Constitutions, whether state or Federal. Complainant's bill sets forth in detail the manner in which those principles are involved in the present crisis, and the manner in which they operate to render the "Eighteenth Amendment" invalid. Those which are relevant are the following:

A. *State Sovereignty.* The states exist as units in a Federal Union. Their sovereign powers can be surrendered by them when the surrender is the explicit and authentic act of their people, but these powers cannot be taken from them without their consent.

B. *Inalienable Rights.* Just as the states possess certain sovereign rights which cannot be taken from them without their consent because they have been reserved, so the people individually, in organizing their states, have reserved certain individual rights which are not surrendered to the community and these also cannot be taken from them without their consent. Among them is the right to use their

natural powers for their present enjoyment so long as they do not thereby cause injury to others, so long, in other words, as they obey the maxim *sic utere tuo ut alienum non laedas.*

C. *Due Process of Law.* Another is the inalienable and reserved right to be heard in their own behalf when their liberties are in question, and to retain their rights and exercise their liberties until it is determined after such a hearing that they are using them to the injury of others.

D. *Just Compensation.* Another inalienable and reserved right is that when the various members of the community are called upon to make a sacrifice for the general good, in so far as the sacrifice of any single member is in excess of that of his neighbors, they shall share his burden to the extent that compensation is possible.

E. *Delegated Powers.* Another constitutive principle in our form of government is that the representatives of the people in their legislative assemblies are subject to all the duties and responsibilities of fiduciaries. They owe to the people the duty of loyalty, and the powers which are delegated to them by the people do not authorize them to destroy or abridge the rights of the people whom they represent.

As we shall see in the sequel, these principles control our Government even when they are not explicitly expressed in our state and Federal Constitutions, but also we shall see that they have been

repeatedly formulated in our state and Federal Constitutions and thus have become the written law of the land. As written and unwritten law alike, they operate as limitations both upon the powers of the people, whether of the Federal Union or of the individual states, and of their delegated representatives. In both their aspects, as written and unwritten law, the "Eighteenth Amendment" is repugnant to them, and is, therefore, beyond the powers of the peoples themselves and of the legislative bodies which have assumed to propose and ratify it.

Before we proceed to a consideration in detail of these principles, some preliminary observations will be of value.

All the principles just defined are definitions of fundamental and admitted rights, and this is by far the most important of the many important aspects of this most important of all constitutional problems.

The *authority* of the American people is only limited by the *rights* of the American people. They may make their government what they please, they may enter upon what enterprises they please, they may make what regulations they please, and the will of the majority shall control—just so far as they do not infringe upon those unquestioned *rights* of the people, even the smallest minority, which it is the object of their government to protect and promote. Consequently, it is only the *rights* of the people which can set limits to the *power* of the people to modify their organic instruments of government. The "Eighteenth Amendment" cannot be shown to be invalid unless it can be shown to be an invasion of the *rights* of the people.

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There has been much and grave misapprehension on this point.

For example, there has been advanced a theory that there is a difference between the subject-matter of constitutions and the subject-matter of legislation, and that a constitution, at any rate the Constitution of the United States, is not amendable so as to include merely legislative matter. It has been suggested that under our system of government legislative matter must pass through the legislative bodies and receive executive consideration, while constitutional matters are to be relieved from executive consideration and are to be passed upon by the people. From that assumption as a premise it is further argued that when the Federal Constitution was framed and provisions looking to its amendment were inserted in it, those provisions were not "intended" to permit the addition to it of purely legislative matter. It is then asserted that the "Eighteenth Amendment" contains matter that is essentially legislative, and thence the final conclusion is drawn that the people have divested themselves of the power to add its matter to the Constitution.

The distinction between the subject-matter of constitutions and the subject-matter of legislation is an artificial refinement which does not easily commend itself as a ground for attacking the invalidity of an instrument which has received the approval of thirty-six legislatures of a great federal union. There is little to indicate that it is such a distinction as to limit the powers of the United States to amend their own Constitution. Granting this essential premise, however, for the sake of argument and solely for the sake of argument, we desire to point out that the views thus set forth

turn upon matters of form and not upon matters of substance. They involve the proposition that the people have limited their powers even in matters of form, and that they have so fettered themselves that they cannot, either by themselves or by their delegated representatives, change the form of their compact of union. Furthermore, they involve the assumption that the powers of amendment which the Federal Constitution contains are limited in a manner which is quite inconsistent with the present customs of the people, who are continually amending their state constitution by provisions which are essentially legislative in the meaning of the word as used in the theory under consideration, but which are put into the Constitution for the express purpose of withdrawing them from cognizance by the legislatures. The theory therefore attributes to the word "amendment," a meaning which is entirely different from that which it possesses at the present time, and involves the hypothesis that the word "amendment" as used when the Federal Constitution was adopted was quite different from the word "amendment" as used at the present time.

Apart from the difficulties of proof, the vice in such a theory is that it presupposes limitations upon the popular powers of self-government of which nobody has ever dreamed. It has been a commonplace of our American constitutional views that the powers of the people stop at the infringement of personal liberties: but that there are other shackles upon the powers of the people, shackles which are independent of the liberties of the individual and which are purely formal in their nature, is obviously impossible of acceptance.

Such a principle would lead to the conclusion, for example, that the peoples of the several states could

not ratify any amendment involving legislative detail, even by the unanimous vote of forty-eight popular conventions adhering strictly to the provisions of Article V, because, forsooth, the matter of it was legislative and not constitutional. Formalism can go no further.

There is another theory which has found acceptance. It is to the effect that the division of powers between the State and Federal Governments is such a vital element in our Federal Union that any effort to change it is revolutionary and, therefore, not within the category of admissible efforts to change the Constitution. This again, is a matter which does not concern fundamental rights. It is a theory which presupposes limitations upon the power of the people which do not spring from the necessary conditions of popular government, but are artificial limits which the people have imposed upon their own powers.

There is nothing, however, which is revolutionary in the mere transfer of sovereign powers, either in whole or in part, from the people of the several states to the people of the United States. On the contrary, it is altogether probable that in subsequent years it may become necessary to clothe the Federal Government with powers which it does not now possess and to divest the states of powers with which they are now vested. The ease and rapidity of communication is so swiftly increasing, and the limitations of distance are being so easily overcome, that the individuality of the states is certain to become less and less important with the lapse of time. In truth, the centralizing process by which special powers are surrendered to the Federal Government is evolutionary rather than revolutionary. To suppose that an amendment to the Constitution

which furthers that process is impossible because it is revolutionary is not only to assume that the people have hampered themselves in matters which are not matters of substance, but is also to misunderstand the true process of evolution.

As we have said before, it is not until we come to the question of ultimate rights that we come to the true bounds of popular power. When the states organized the Union they reserved certain rights to themselves and they cannot be deprived of these rights without their consent, but when they consent, the surrender of these rights is not revolutionary, nor does it exceed the powers of amendment inherent in the covenant of union.

We have discussed these two theories, not out of any spirit of criticism, but because a consideration of them will tend to a strong clarification and confirmation of the grounds upon which the "Eighteenth Amendment" is assailed in complainant's bill. With one exception to be noted later, every valid ground of objection to the amendment is based upon fundamental rights. A decision of this Court supporting the amendment as against the objections urged in the bill is, and must be, and will be, a decision that rights which are admittedly fundamental, which are admittedly the basis of our free institutions, which have been the clearly recognized stepping-stones upon which the people of the United States have risen to their present power, prosperity, and happiness, are non-existent in fact and are subject to any arbitrary or oppressive limitation that may be imposed upon the people in the guise of an amendment to the Constitution of the United States. On the other hand, a decision of this Court sustaining either of the two theories which we have just outlined will be a decision that the funda-

mental rights of the people furnish no limitations upon the powers of amendment, but that there are certain matters of form, and not of substance, which furnish their only protection against confiscatory and oppressive additions to the Constitution.

With this preface, let us proceed to a consideration of the constitutive principles invaded by the "Eighteenth Amendment."

A.

State Sovereignty.

It is an essential characteristic of all co-operative effort that the parties to the compact bring to it whatever obligations are necessary in their opinion to the achievement of the common purpose, and that the agreement of co-operation shall define the contribution which each party makes to it. It is also an essential characteristic of co-operative effort that the parties to it reserve all their rights, possessions and liberties which are not by necessary enumeration contributed to the enterprise, and that, as to those rights, liberties and possessions, they are as free after the compact is concluded as they were before. It is also an essential characteristic of such compacts that they cannot be extended to impair or destroy any of the reserved rights or liberties without the unanimous consent of all the parties to the compact.

These truths are obvious upon reflection, and they apply to the thirteen states that organized the Union and to all the states that subsequently joined it. In each case the mere fact of retaining their independent existence as states involved the maintenance of their powers as states, except in

so far as by the instrument of the Union they were surrendered to the federated unity. It also follows that these rights which were thus reserved by the states cannot be taken from them without their consent. Any provision in the covenant that it could be amended after a certain procedure did not, and could not, mean that the reserved rights could be taken away from any state without its consent.

When a number of men form a corporation and provide that the articles may be amended by a certain vote, the amendments which are possible under such a provision are limited to matters which do not affect the rights or properties of the stockholders outside of the corporate assets, and do not extend to the proportionate interests of the stockholders in the assets of the corporation. Nothing less than a unanimous consent of all the stockholders in the corporation can operate to reduce their property interests in it. So long as one stockholder, owning one share of stock, holds out, his interest in a corporation cannot be diminished by the vote of all the other stockholders, and if *his* interest is not diminished, the interests of the other stockholders, even of those who have consented to the vote, are not diminished.

Similarly, in regard to the states, an amendment which pares down the reserved rights of the states and transfers a part of their rights to the Federal Government is ineffective as to any dissenting state; and being ineffective as to any dissenting state is ineffective as to all the rest of them. If Rhode Island had been the only state to refuse to ratify the "Eighteenth Amendment," the result would have been, not merely that its reserved sovereign powers would have remained unimpaired by the ratification of the other forty-seven states,

but that the ratification would have been ineffective as to the other forty-seven as well.

It might be possible for an individual state to surrender to the Federal Government its powers of internal government and police, and that after such a surrender the Federal Government could legislate as effectively within the territorial limits of the state in regard to the surrendered sovereignty as it can now legislate with regard to the territories which are still in its possession; but, nevertheless, on an amendment properly submitted to the states which calls for a general surrender of the powers of internal government and police, the consent of forty-seven of the states to that amendment is not sufficient to give it validity, and it cannot become valid even as to the forty-seven states until the forty-eighth state shall have also given its consent.

The bill alleges that this principle of reserved rights operates to prevent the "Eighteenth Amendment" from taking effect as an amendment to the Constitution of the United States, and the allegation is irrebuttable, because Rhode Island, Connecticut and New Jersey having failed to ratify, their sovereign rights have not been taken away from them and now exist as unimpaired as they were before the resolution was proposed in Congress. Not only are the sovereign rights of these states unimpaired, but the "amendment" has not taken away the sovereign rights of other states which have apparently consented to it. The "amendment" is, therefore, a nullity. It does not confer upon the Federal Government concurrent power to regulate the internal government or police of any state in the Union, and the Constitution is not amended in that particular.

Bill, Section X, paragraph A.

Not only is this true by reason of the essential nature of the Federal Republic, but it is also true by reason of the guaranties contained in the covenant of union of the United States.

After the Constitution was adopted, it was amended by a vote of the states, and among the amendments thus adopted was one which was intended to obviate the possibility of a misunderstanding on this essential subject. The Tenth Amendment expressly declared that the rights not surrendered to the Federal Government or prohibited to the states were reserved to the states. That was more than an amendment to the Constitution. It was a guaranty. It was a contract between the states and the Federal Government. It also operated as a limitation upon, and, therefore, a repeal of, any powers which the original instrument might have contained which were inconsistent with it. If, in other words, the original instrument contained a power by which the Federal Government could absorb the sovereign rights of the states by a vote of three-fourths of them, that power was taken away from them by the Tenth Amendment and ceased to exist, and does not exist at the present time. Whatever rights may be contained in the amendment clause of the Constitution are taken away to the extent of the rights reserved to the states by the Tenth Amendment.

Bill, Section X, paragraph K.

Not only are the sovereign rights of the states inherently inalienable and indstructible, and not only are they guaranteed by the Tenth Amendment to the Constitution of the United States, but in many of the states they have been removed from

the province of the legislature. In these states they cannot be surrendered to the Federal Government, save by the act of the people themselves. Consequently the legislative act of ratification in those states was *ultra vires*, null and void.

Bill, Section X, paragraph U.

B.

Inalienable Rights.

Every constitution in our American republic asserts either that the people have certain inalienable rights or that an enumeration of certain rights in the Constitution does not operate to diminish or impair other rights which are reserved to the people. That principle of inalienable and reserved rights is the inexpugnable law of the land. There is no power resident anywhere in the Union which can take away those inalienable rights. The only question is, what rights are inalienable?

The answer to that question is simple. It is found in the Latin maxim, which is a commonplace of our jurisprudence, *sic utere tuo ut alienum non laedas*—do not so use your property as to injure your neighbor. Subject to that limitation, every American may use his natural liberty in the enjoyment of his property and in the pursuit of his happiness, and there is no authority in the country which can lawfully deprive him of that liberty. It is an inherent right. It rises superior to constitutions and statutes and will be protected by the courts. This was explicitly declared by this Court in the case of

Loan Association v. *Topeka*, 20 Wall., 655,

in which it was held that a state statute was void, even in the absence of constitutional provisions limiting the powers of the legislature, upon the simple ground that it invaded inherent rights of the people. The statute in that particular case levied a tax on the people for the support of a private enterprise. As the Court put it at page 662, "the law authorizing it was beyond the legislative power, and so was an unauthorized invasion of private right." The Court then went on to say:

> "It must be conceded that there are such rights in every free government beyond the control of the state. A government which recognized no such rights, which held the lives, the liberty, and the property of its citizens subject at all times to the absolute disposition and unlimited control of even the most democratic depository of power, is after all but a despotism. It is true it is a despotism of the many, of the majority, if you choose to call it so, but it is none the less a despotism. It may well be doubted if a man is to hold all that he is accustomed to call his own, all in which he has placed his happiness, and the security of which is essential to that happiness, under the unlimited dominion of others, whether it is not wiser that this power should be exercised by one man than by many.
>
> "The theory of our governments, State and National, is opposed to the deposit of unlimited power anywhere. The executive, the legislative, and the judicial branches of these governments are all of limited and defined powers.
>
> "There are limitations on such power which grow out of the essential nature of all free governments. Implied reservations of individual rights, without which the social compact could not exist, and which are

> respected by all governments entitled to the name. No Court, for instance, would hesitate to declare void a statute which enacted that A and B, who were husband and wife to each other should be so no longer, but that A should thereafter be the husband of C and B the wife of D. Or which should enact that the homestead now owned by A should no longer be his, but henceforth be the property of B."

It is not necessary to burden the Court upon any branch of the law of this case with unnecessary citations. The complainant's position rests upon principles which are too obvious to admit of dispute, and one expression of views by this Court, such as we have just quoted, is amply sufficient for our purpose. When all the constitutions in the country and the considered opinion of this Court unite in the expression of a given view, further authority seems superfluous.

The inalienable rights of the people of the United States are invaded by the "Eighteenth Amendment," because it not only prohibits the use of alcohol in circumstances in which injury to the community will necessarily ensue, but also in circumstances from which injury cannot possibly result. That a moderate and sober use of alcoholic beverages, without injury to the community, is possible —and common—is indisputable. It is within the experience of every man, and yet an intolerable "amendment" assumes to take away that right.

The right to the protection of our fundamental rights springs not only from the fact that they are inherent,

Bill, Section X, paragraph B.

and will be protected by the courts,

Loan Association v. *Topeka,* 20 Wall., 655,

but also by the fact that they are guaranteed by all our constitutions, state and national.

The Ninth Amendment to the Federal Constitution reserves them.

Bill, Section X, paragraph F.

The Fourteenth Amendment guarantees the privileges and immunities of the citizens of the United States, and among those immunities is that granted by the Ninth Amendment with respect to reserved rights.

Bill, Section X, paragraph H.

These reserved rights are the condition precedent of a republican form of government. If any part of the citizens, minority or majority, can take away the rights of the other part, majority or minority, the government is not republican. The Constitution of the United States (Art. IV, Sec. 4) guarantees a republican form of government to the states, and this Court, as one of the three coordinate branches of the government of the United States, is charged, like the others, with the duty to see that the guaranty is fulfilled. The "Eighteenth Amendment" is in violation of the covenant and is, therefore, void.

Bill, Section X, paragraph J.

The reserved rights of the citizens are in many state constitutions declared to be not subject to any arbitrary or absolute power, they are excepted

out of the powers of government, they are inalienable, they are declared to be not impaired by the enumeration of other rights, and they are held to be brought within the protection of the Constitution of the United States,

Bill, Section X, paragraphs M, N, Q, R and S,

and in those states, the legislatures have no authority to impair or abridge them, even by ratifying proposed amendments to the Constitution.

To sum it all up, there is no lawful authority anywhere in this Union or in any of its parts to forbid a citizen of the United States to indulge in the moderate and sober use of alcoholic beverages, when no injury results therefrom to others —and that means that *some* use of alcoholic beverages is permitted to *every* man, and that *all* use cannot be prohibited to *any* man.

C.

Due Process of Law.

Another fundamental principle at the base of our governmental system is that before any man can be deprived of his liberties upon any ground whatsoever, he shall be entitled to be heard in his own behalf. This right is defined by the phrase "due process of law," and that phrase means that it is the process of the law to which every man is entitled when his rights are assailed or questioned. There must be a charge against him. He must be notified of the charge. He must have an opportunity to present arguments in his own behalf, and if

questions of fact arise, to adduce evidence relevant to the issue, and to have all this take place before a tribunal which is vested with appropriate jurisdiction to determine the question.

This tribunal need not be a court in the technical sense of the word, but it must be a tribunal which exercises judicial functions, which determines the issue upon evidence and argument, and which must have the power to ascertain all the facts necessary to a determination. A board of tax assessors is a tribunal in that sense of the word. Public Service Commissions are tribunals in that sense of the term. The Draft Boards were tribunals in that sense of the term. In all these cases, a man whose rights are at stake is entitled to notice, to his hearing, and to an opportunity to produce any and all facts relevant to the issue, in a word, to his day in court.

For years there has been a vigorous assault upon the use of beverages containing alcohol. There have been countless charges made of its iniquity and of its injurious effect upon the community, and as a result there have been numerous statutes enacted in the various states of the Union, and now the "Eighteenth Amendment" has been adopted, prohibiting the use of it altogether. Nevertheless in spite of that attack, which has been continued for so long, no man whose rights or liberties have been thus brought in question, whether he be manufacturer, dealer, or user, of alcoholic beverages, has ever had his day in court to meet the charge that the community suffers damage at his hands. There has never been a case in court in which such charges have been alleged by pleadings, in which those concerned have had an opportunity to deny them by pleadings, in which there has been any evidence adduced to prove or disprove the charges, or in which

there has been an unbiased or competent tribunal to hear and determine the issue. The states have legislated on the subject without practical let or hindrance, and the industry has been alternately petted and choked, fostered and prohibited, with a disregard of the first considerations of the constitutional right to the day in court which is almost without parallel.

Not only has this happened, but, except in one case (*People* v. *Wynehamer*, 13 N. Y., 378), the right of those who are concerned to be heard in a court before their liberty or property is taken away seems never to have been demanded. We are not particularly concerned with the cases in the state courts, but we are concerned to point out that in this Court the question which we are now presenting as to the right of those who use or deal in beverages containing alcohol to their day in court on the question of their injuring the community of which they are members before their liberty or property can be taken away, is a new question, undiscussed, and of absolutely first impression.

The first case before this Court which involved the question of the due process of law and prohibition was

Bartemeyer v. *Iowa*, 18 Wall., 129.

An Iowa statute prohibited the traffic in alcoholic liquors within the state. The statute was assailed as unconstitutional as being in violation of the due process clause of the Fourteenth Amendment. The case was submitted on briefs, but the Court declined to pass upon that issue of the constitutionality of the act, because it was satisfied "that a moot case was deliberately made up to raise the particular

point when the real facts in the case would not have done so."

The issue might have been presented in the later case of

Beer Co. v. *Massachusetts*, 95 U. S., 25,

which grew out of a prohibitory law of Massachusetts. Counsel for the Beer Company, however, which was operating under an ancient charter, based their contention upon Article I, Section 10, Clause 1 of the Constitution, which forbids the states to pass any law impairing the obligation of contracts, and declined to avail themselves of the due process clause of the Fourteenth Amendment. The language of their brief is that "the company does not invoke the aid of the Fourteenth Amendment to the Constitution, but submits that the statute * * * impairs the obligation of the contract contained in the charter."

This Court, although the Fourteenth Amendment was not invoked by the defendant, concluded its opinion in this language:

> "Since we have already held in the case of *Bartemeyer* v. *Iowa* as a measure of police regulation looking to the preservation of public morals, a state law prohibiting the manufacture and sale of intoxicating liquors is not repugnant to any clause of the Constitution of the United States, we see nothing in the present case that can afford any sufficient ground for disturbing the decision of the Supreme Court of Massachusetts."

As we have seen, however, in the *Bartemeyer* case the Court declined to discuss the question whether

prohibition was repugnant to the Fourteenth Amendment, and consequently its statement in the *Beer Company* case is erroneous.

The third case to come before this Court involving prohibition and due process of law was

Mugler v. *Kansas*, 123 U. S., 623,

which grew out of a Kansas prohibitory statute. *All the counsel in that case, however, began their argument by conceding that prohibition within the state was constitutional.* Senator Vest, of counsel for one of the defendants, admitted that "the state has unquestionably the power to prohibit the manufacture, for sale or barter, of intoxicating liquor within its limits" and Mr. Joseph H. Choate began his argument with the concession that the Legislature of Kansas was the "sole judge of how far they should go in forming the morals and habits, and regulating the appetites and prescribing the food and drink of the people of Kansas."

Although counsel thus refused to discuss the question of the constitutionality of prohibition within the state, they did advance an argument which turned ultimately upon the due process clause. It may be summarized as follows:

> "We concede that the state under its police power can constitutionally prohibit the manufacture of alcoholic beverages for barter or sale to its own citizens, but nevertheless it cannot prohibit the manufacture of alcoholic beverages for barter or sale to persons outside of the state, because those persons are beyond its police power and not subject to its jurisdiction, and as to them the

state does not possess the regulatory powers which it possesses over its own citizens.

Consequently in prohibiting the manufacture of alcoholic beverages for sale without the state the legislature exceeded its powers and therefore deprived the defendants of their liberty and property without the due process of law guaranteed to them by the Fourteenth Amendment."

The Court answered this argument in the following language:

> "A portion of the argument on behalf of the defendants is to the effect that the statutes of Kansas forbid the manufacture of intoxicating liquors to be exported or to be carried to other states, and upon that ground are repugnant to the clause of the Constitution of the United States *giving Congress power to regulate commerce with foreign nations and among the several states.* We need only say, upon this point, that there is no intimation in the record that the beer which the respective defendants manufactured was intended to be carried out of the state or to foreign countries. And, without expressing an opinion as to whether such facts would have constituted a good defense, it is observed that it will be time enough to decide a case of that character when it shall come before us."

We have examined the original record of this case in the library of the Bar Association of the City of New York. It is deficient in some particulars. For example, it does not contain the brief of Mr. Choate. So far as we have been able to ascertain, however, the record nowhere mentions the commerce clause of the Constitution. It was not mentioned in the assignment of errors, and it is not

mentioned in the report of the case by the official reporter. We do not understand, therefore, how this Court could have supposed that the argument was based upon the commerce clause in the body of the Constitution when it was in truth based upon the due process clause in the Fourteenth Amendment.

Although counsel for the defendants refused to discuss the question of the constitutionality of the prohibitory statute within the jurisdiction of the states, the Court discussed it in its opinion at considerable length. Thus it appears that the Court discussed a question which counsel *did not* argue, and, upon an erroneous statement of the condition of the record, declined to decide a question which counsel *did* argue.

A court is always at a disadvantage when it discusses any question without the aid of argument by counsel, and the results are apt to appear in its opinion. This is true of the discussion of the Court in the *Mugler* case. Twice this Court declared that the Fourteenth Amendment was superior to the police power of the states, and twice declared that the police power of the states was superior to the Fourteenth Amendment.

On the point of the superiority of the police power to constitutional prohibitions it says:

> "In *Beer Company* v. *Massachusetts*, 97 U. S. 25, 33, it was said that, 'as a measure of police regulation, looking to the preservation of public morals, a state law prohibiting the manufacture and sale of intoxicating liquors is not repugnant to any clause of the Constitution of the United States.' Finally, in *Foster* v. *Kansas*, 112 U. S. 201, 206, the court said that the question of the

constitutional power of a State to prohibit the manufacture and sale of intoxicating liquors was no longer an open one in this court" (p. 659):

Again it says:

"No one may rightfully do that which the lawmaking power, upon reasonable grounds, declares to be prejudicial to the general welfare.

"This conclusion is unavoidable, unless the Fourteenth Amendment of the Constitution takes from the States of the Union those powers of police that were reserved at the time the original Constitution was adopted. But this court has declared, upon full consideration, in *Barbier* v. *Connelly*, 113 U. S. 27, 31, that the Fourteenth Amendment had no such effect. After observing, among other things, that that amendment forbade the arbitrary deprivation of life or liberty, and the arbitrary spoliation of property, and secured equal protection to all under like circumstances in respect as well to their personal and civil rights as to their acquisition and enjoyment of property, the court said: 'But neither the amendment—broad and comprehensive as it is—nor any other amendment, was designed to interfere with the power of the State, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education, and good order of the people, and to legislate so as to increase the industries of the State, develop its resources and add to its wealth and prosperity'" (p. 663).

On the other hand, the Court twice declares that in such matters the Constitution is supreme. It says:

> "The courts are not bound by mere forms, nor are they to be misled by mere pretenses. They are at liberty—indeed, are under a solemn duty—to look at the substance of things, whenever they enter upon an inquiry whether the legislature has transcended the limits of its authority. If, therefore, a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to these objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution" (p. 661).

And again:

> "Undoubtedly the State, when providing by legislation for the protection of the public health, the public morals, or the public safety, is subject to the paramount authority of the Constitution of the United States, and may not violate rights secured or guaranteed by that instrument or interfere with the execution of the powers confided to the general government" (p. 663).

There is another branch of the *Mugler* case which also requires consideration. The statute there under consideration provided that "all places where intoxicating liquors are manufactured * * * are hereby declared to be common nuisances."

A nuisance is defined to be "anything that unlawfully worketh hart, inconvenience, or damage. 3 *Blackstone's Commentaries*, 5, 216."

> *Bouvier's Law Dictionary, sub voc.* Nuisance.

The question therefore arose in the *Mugler* case whether a place where intoxicating liquor was manufactured was a place which worked hurt, inconvenience or damage, and whether a declaration by the legislature that a brewery was such a place was repugnant to the due process clause of the Fourteenth Amendment. Counsel advanced the obvious argument that that declaration of the statute deprived them of their day in court upon the question of whether it worked hurt, inconvenience or damage, and in support of their argument they pointed out that the inquiry which the statute permitted related only to the question whether the given place was a brewery, and that they were foreclosed of their right to prove that it worked no hurt, inconvenience or damage.

The Court answered the contention of counsel in this language:

> "Nor is the Court required to adjudge any place to be a common nuisance simply because it is charged by the state to be such. It must first find it to be of that character; that is, must ascertain, in some legal mode, whether since the statute was passed the place in question has been, or is being, so used, as to make it a common nuisance."

Again the Court was in serious error. It declared that the statute permitted the inquiry which takes place in every case in which there is a charge of maintaining a public nuisance, whereas the fact was that the statute foreclosed it absolutely.

The *Mugler* case may be summed up as follows:

1st: Counsel conceded that prohibition was not *per se* repugnant to the due process clause of the Fourteenth Amendment.

2nd: The Court discussed that question without the aid of counsel and reached the conclusion which counsel conceded.

3rd: The Court in its discussion took two inconsistent positions: one that the police power of the states was superior to the Fourteenth Amendment, and one that the Fourteenth Amendment was superior to the police power of the states.

4th: The Court misapprehended the mandate of the due process clause and omitted to observe that it guaranteed a judicial procedure which the statute in the case before it denied.

5th: The Court declined to pass upon the first issue raised by counsel for the defendants upon the erroneous statement that it was based upon the commerce clause in the body of the Constitution when it was in fact based upon the due process clause of the Fourteenth Amendment.

6th: The Court overruled the contention of counsel that they had had their day in court on the question of nuisance upon the erroneous statement that the statute permitted a judicial inquiry into a fact which the statute distinctly forbade.

The next case in this Court was

Kidd v. *Pearson*, 128 U. S., 1.

Like the *Mugler* case, it involved the question of prohibition within the state and also the prohibition of manufacture for export without the state. On the question of prohibition within the state the Court held itself bound by the decision in the *Mugler* case. On the question of manufacture for export, the Court held that the statute was not repugnant to the commerce clause in the Constitution, because that clause begins to take effect only when transportation begins, and does not operate during manufacture prior to transportation. Neither counsel nor court considered the question whether prohibition denied the day in court on the issue of injury to the community.

The next case,

Crowley v. *Christensen*, 137 U. S., 86,

was colorless. It contains no reference by either court or counsel to prior decisions and does not discuss the right to a day in court.

Another case which came to this Court was

Purity Extract Co. v. *Lynch*, 226 U. S., 192.

The Mississippi legislature enacted a statute which prohibited the sale of "vinous, alcoholic, malt, intoxicating or spirituous liquors or intoxicating bitters or other drinks, which, if drunk to excess, will produce intoxication."

The question was whether the statute forbade the sale of a beverage known as "Poinsetta." The case came up on an agreed statement of fact. An exam-

ination of the record shows that the facts were stipulated. Among them were these:

> "Poinsetta contains no alcohol.
>
> "Poinsetta is guaranteed under the Pure Food Laws of Congress and no matter to what extent taken will not produce intoxication.
>
> "It has a distinctive odor dissimilar from any intoxicating drink and *cannot be employed as a subterfuge for the sale of beer* because it is bottled in a distinctive way and its name blown in each bottle which contains the beverage."

The Mississippi court held, first, that the sale of Poinsetta was forbidden by the statute whether it was intoxicating or not, because it was made of malt, and, second, that its sale could be constitutionally prohibited, because the police power of the state was "broad enough to make its prohibitory laws effective and include in its provisions frauds, disguises, *subterfuges*, attempted evasions for beverages easily used as subterfuges and known to be the handmaidens of intoxicating beverages."

In other words, the Court decided that the sale of Poinsetta could be constitutionally prohibited because Poinsetta was a subterfuge when the record before it expressly stipulated that Poinsetta was not a subterfuge.

It is clear that the Mississippi court was saved from the guilt of a deliberate falsehood only by the circumstance that it made no categorical affirmation. It did not in terms assert that Poinsetta was a subterfuge for intoxicating liquors, but it assumed that fact as the implied premise of its conclusion. Its moral guilt is just as great, therefore, as if it perpetrated a deliberate falsehood, be-

cause it deliberately grounded its decision upon premises which it know to be false.

When the case came here, this Court held itself bound, as to the interpretation of the statute, by the decision of the Supreme Court of Mississippi, and counsel for the *Purity Extract Company* apparently made no attempt to bring to the attention of this Court the gross impropriety, to use moderate language, of the decision below. Upon the record thus inadequately presented to it, this Court affirmed the decision of the lower court upon this ground:

> "The statute established its own category [i. e. of prohibited beverages]. The question in this court is whether the legislature had power to establish it. The existence of this power (as the authorities we have abundantly cited demonstrate) is not to be denied because some innocent articles or transactions may be found within the prescribed class. The inquiry must be whether, considering the end in view, the statute passes the bounds of reason and assumes the character of a merely arbitrary fiat."

In other words, this Court held that it was not an arbitrary fiat of the state legislature to prohibit the manufacture of Poinsetta upon the ground that it was a subterfuge when the agreed fact was that it was not, and could not be, a subterfuge. If that was not irrational, when *is* a statute irrational?

The question whether the statute deprived the *Purity Extract Company* of its day in court on the question whether it was doing anything to the detriment of the community was not raised and was not discussed.

The latest case to come before this Court involving a prohibitory statute is:

Hamilton v. *Kentucky Distilleries & Warehouse Co.*,

decided December 15, 1919, and not yet reported.

In that case the statute was the National Prohibition Act. It was assailed as being repugnant to the Fifth Amendment to the Constitution. The main ground of the attack was that the property of the complainants in that case was taken without just compensation. The due process clause was not discussed, either by the Court or by counsel.

At least twice this Court has said that the question of the constitutionality of prohibition under the due process clause is not open to the Court: *Foster* v. *Kansas*, 112 U. S., 201, 206 ("no longer open in this Court"); *Clark Distilling Co.* v. *Western Maryland Railway Company*, 242 U. S., 311, 320 ("not open to controversy"). Our examination of the cases, however, has disclosed the remarkable fact that the right of the citizen to his day in court before his liberty to manufacture, sell or use alcoholic beverages can be taken from him, has never been suggested by counsel or discussed in any of the opinions delivered by this Court. It is presented here and now for the first time in the entire history of prohibitory legislation in the Federal courts, and it presents a case of first impression.

The demand that life, liberty or property shall not be taken without due process of law involves the procedure of the law, and not its substance, except in so far as the substance is involved in the procedure. The procedure which is guaranteed by the Constitution is the procedure of the courts, and

the Constitution consequently takes from the legislature the power of determining questions as to which there is a dispute and as to which a citizen may desire to defend his rights. In other words, the due process clause is but an extension of the distinction between the legislative and the judicial powers. The legislature cannot be the arbiter of disputed facts, and when the facts are disputed, the Constitution guarantees that the parties to the dispute may have the arbitrament of the courts.

If, for example, there is a dispute as to whether the use of alcoholic beverages is injurious to the community, the Court and not the legislature must determine it. If there is a dispute as to whether a given content of alcohol is necessary to make a beverage intoxicating, the Court and not the legislature must determine it. The reason is that in the first place the question is judicial in its nature and not legislative, and, in the second place, that a judicial determination is guaranteed by the Constitution.

The views of this Court upon this question are well expressed in the following quotation from the *Mugler* case, which is a fair statement of the accepted doctrine of the Court:

> "The courts are not bound by mere forms, nor are they to be misled by mere pretenses. They are at liberty—indeed, are under a solemn duty—to look at the substance of things, whenever they enter upon an inquiry whether the legislature has transcended the limits of its authority. If, therefore, a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to these objects, or is a palpable in-

> vasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution.
>
> "Keeping in view these principles, as governing the relations of the judicial and legislative departments of the Government to each other, it is difficult to perceive any ground for the judiciary to declare that the prohibition by Kansas of the manufacture or sale, within her limits, of intoxicating liquors for general use there as a beverage, is not fairly adapted to the end of protecting the community against the evils which result from the extensive use of ardent spirits."

They are similarly stated in the *Purity Extract* case in this language:

> "The inquiry must be whether, considering the end in view, the statute passes the bounds of reason and assumes the character of a merely arbitrary fiat."

This view denies the right to a judicial investigation which is guaranteed by the Constitution. It makes the question of due process turn, not upon the grant or denial of a judicial investigation, but upon the question whether the legislature in enacting its law has acted arbitrarily or irrationally.

We submit, with deference, that this view involves a radical misconception of the effect of the due process clause.

We submit that the occasion can never arise upon which the judicial branch of the Government may inquire whether the legislative branch of the Government has legislated in a manner which is either arbitrary or irrational.

We submit that the only inquiry upon which the judicial branch of the Government can possibly enter with respect to legislative action under a due process clause is to inquire whether the day in court has been established as the condition precedent to the impairment of individual liberty.

We submit that before complainant can be deprived of his liberty to sell beverages containing alcohol, he must, under his right to due process of law, first be afforded his day in court on the charge that his business "worketh hurt, inconvenience or damage," and that his liberty to sell such beverages cannot be taken from him unless and until that charge has been proved by competent evidence.

We submit that no court has authority to prejudge that issue, either upon a theory of judicial notice or of judicial presumptions, but that the burden of proof is on him who brings the charge.

Finally, we submit that in taking these positions we are standing upon "the letter of the law," and that in this instance "the letter of the law" is also its spirit and is the very soul of American civilization. When any American court shall permit the liberties of any American citizen to be impaired or abridged without his day in court, the decline of American institutions will have begun—not to stop until the decision is reversed or overruled.

Now let us see how the due process of law has been guaranteed to complainant.

It has been guaranteed to him by the inherent nature of our republican institutions.

Bill, Section X, paragraph B.

It has been guaranteed to him by the Fifth Amendment to the Constitution of the United States which limits the powers of the Federal Government.

Bill, Section X, paragraph F.

It has been guaranteed to him by the Fourteenth Amendment which limits the powers of the states.

Bill, Section X, paragraph G.

In other words, neither state nor nation can take liberty or property without due process of law, even by constitutional amendment.

It is guaranteed to him by Article IV, Section 4, because that is not a republican form of government, which begins by abolishing in any particular the right to a due process of law in the impairment of right.

Bill, Section X, paragraph J.

It has been guaranteed to him in all the state constitutions.

Bill, Section X, paragraphs M, N, O, Q, R, S and T.

These guaranties leave no room for doubt. If it is charged that a man's use of alcoholic beverages "wortheth hurt, inconvenience or damage," that charge must be proved in court, and there exists no lawful authority in this country which can punish him for it without that proof, constitutional "amendments" to the contrary notwithstanding.

D.

Just Compensation.

While the liberties of the people are constitutionally defended, it is also true that the community may at all times call upon its members for any sacrifice that may be necessary to the common safety. Life itself yields to that need.

The call cannot be denied, even though only one individual out of the whole community may be required to make the sacrifice. If the necessity exists, the sacrifice must be made. The question of its existence is, of course, judicial, to be determined by evidence, and the citizen is entitled to have the necessity proved. His property cannot be taken, for example, to make way for a public improvement without proof that it is for a public use; but if the public use is proved in court, the taking cannot be resisted.

There is one inherent equity, however, which attends a taking in such circumstances; and the equity is this: If any citizen is called upon to make a sacrifice which is in excess of that of his neighbors, the community as a whole must bear its share of the burden and distribute it, so far as possible, among all the citizens. That leads to the doctrine of compensation for the taking of private property. If it be land, the property must be paid for, and the cost of it must be collected by taxation from the rest of the community; if it be services, the services must be paid for, and their cost similarly collected from the rest of the community. Even in the high exigency of warfare for the protection of the very life of the nation, those who are called upon

to defend the nation are to be compensated so far as compensation is possible.

This principle is another of those self-evident and foundation principles which underlie the structure of our Government. There has been, however, a certain misapprehension as to its extent which has made its appearance in our judicial decisions. It is sometimes supposed that when property is taken or destroyed under the so-called "police power of the states" compensation is not necessary. As a rule of constitutional law, so far as it is a rule, this conception seems to have taken its origin in the case of

Sparhawk v. *Respublica*, 1 Dall., 357,

decided in 1788. It appeared in that case that during the Revolution the Colonial Government seized the plaintiff's property and carried it away to a place of supposed safety in order to prevent the British troops from getting it. The effort was unsuccessful, however—the property was eventually seized by the British where it was deposited, and the question arose whether the plaintiff could get compensation for it. The Court decided against him, citing many cases in support of its judgment. That decision and its citations are, it is believed, the historical origin of the constitutional view which we have just outlined.

The authorities on which the Court in the *Sparhawk* case relied are all cases of trespass decided in England in which the question was whether the defendant was a trespasser for destroying or injuring plaintiff's property in the effort to save himself from imminent danger. To hold that he was a trespasser would have been to deny the right to self-

preservation, but this the English courts, with their characteristic sense of justice, declined to do. To decide otherwise would have been to hold that when a man is pursued by assassins he has no lawful right to flee across another man's land without first getting his consent.

The further question, however, whether a defendant who damages plaintiff's property in the effort to save his own life should compensate the plaintiff for any injury which he may have done was apparently not brought to the attention of the courts. Recently, however, it has arisen and been decided in the Supreme Court of Minnesota. It was there held, citing

Ploof v. *Putnam*, 81 Vermont, 471,

that while the defendant had a right to tie up his boat, even against the plaintiff's protest, to the plaintiff's wharf, in order to escape the dangers of a storm, nevertheless he was liable to the plaintiff for any damage that might be caused to the wharf by the boat while the storm was in progress.

Vincent v. *Lake Erie Nav. Co.*, 124 N. W. Rep. (Minn.), 221.

This is an obviously just conclusion, and the advance which it signalizes in our legal concepts should be closely followed in our constitutional decisions. The state should be allowed the right, and even the duty, to take any property which is necessary to the safety of the state, even if the taking be in the form of mere destruction for the purposes of self-preservation; but, nevertheless, the citizen whose property is taken, if his property has been lawfully acquired, should not be compelled to

bear the whole burden of the loss, but the loss should be distributed throughout the community. In other words, the community should compensate him.

In the case at bar complainant acquired his property lawfully and with the permission and license of the State and Federal Governments. The "Eighteenth Amendment" now undertakes to deprive him of it, and this measure of deprivation is defended as being for the benefit of the community. We have been unable to formulate a single plausible argument in support of the position that he is not entitled to compensation for the taking, except the general current of judicial legislation. On the other hand, there are two principles of constitutional law which entitle him to compensation.

The first principle is embodied in the phrase, "Private property shall not be taken for public use without just compensation." It may be urged that the "taking" under that constitutional phrase does not include destruction without subsequent use, but the argument is not persuasive. Destruction begins with a taking, and after the taking the object is destroyed for the public benefit, *i. e.*, the public use. If, however, the compensation clause is insufficient, the due process clause comes to its support: "No person shall be deprived of life, liberty or property without due process of law."

As we have seen, the process of the law is the process of the courts, and that condition precedent must be observed before any taking whatever can take place. But the process of the courts involves more than the mere day in court. It involves the substance of the law to this extent, that before the property can be taken there must be a just ground for the taking. Otherwise of what use is the day in court? If a man has his day in court, only to

find, after being heard in his own behalf, that his life, liberty or property may be taken without a just cause, or without any cause, by legislative authority, of what use is his day in court? In other words, the day in court must result in the disclosure of a just cause for the taking, or it is not a day in court. In that aspect of the case the destruction of property without compensation is a taking without due process of law.

This precise point was adjudged in the case of

Wynchamer v. *People*, 13 N. Y., 378,

a case which has been frequently cited to this Court, but which, so far as we can learn, this Court has never cited but once. The opinion of Judge Comstock in that case is not surpassed among the judicial opinions of this country, for weight of reasoning or for wealth of learning, and we ask the Court's careful attention to it as a complete and adequate decision in favor of complainant.

With this discussion we are now ready to discuss the application of the principle of just compensation to the "Eighteenth Amendment."

Just compensation is guaranteed to complainant by the inherent nature of a republican form of government.

Bill, Section X, paragraph B.

It is expressly guaranteed by the Fifth Amendment.

Bill, Section X, paragraph F.

It is impliedly guaranteed by the Fourteenth Amendment in its due process clause.

Bill, Section X, paragraph G.

It is again guaranteed by the immunities clause of the Fourteenth Amendment.

Bill, Section X, paragraph H.

It is also guaranteed by the guaranty of a republican form of government in Article IV, Section 4.

Bill, Section X, paragraph J.

It is also guaranteed by the state constitutions.

Bill, Section X, paragraphs M, P, R and S.

As is the case with the due process clause, these guarantees amply protect the people against confiscation even by attempted constitutional amendment.

E.

Delegated Powers.

The representatives of the people in their legislative assemblies act with a delegated authority. They are agents, and their acts are the acts of the people whom they represent. Clothed with the authority of agents, they are also subject to the correlative duties of agents—which are those of every fiduciary, and which above all include the duty of loyalty—and those correlative duties operate as limitations upon the delegated authority. While, therefore, our legislative assemblies are authorized to enact laws for the people, they are not authorized to enact laws which betray the people whom they represent.

This is a self-evident principle of law. It operates without constitutional enactment,

Loan Association v. *Topeka,* 20 Wall., 655,

and also it has been constitutionally declared. It will not be seriously questioned—in this country, at any rate.

Whom do the legislators represent?

There has been some doubt on this point. It has been supposed, for example, that Article V of the Constitution, the amendment clause, "delegates" to the state legislatures the authority to ratify proposed amendments. This is serious error, however. Whatever authority they possess is derived solely from the people who elect them. It cannot come from any other source, else they would owe a divided duty—a duty divided between the sources of their authority.

Such a situation would be impossible as a mere matter of practicability, because it would at once introduce an irreconcilable conflict of duties and oftentimes an equally irreconcilable conflict of interests. Moreover, it is impossible as a matter of law. The Federal Government cannot, even through the Constitution, delegate any authority to the states or the agencies of the states. The movement of authority is always in the opposite direction.

The truth is that instead of "delegating" any authority to the state legislatures to ratify amendments, the Constitution was adopted on the assumption that they already possessed it—which, as a matter of law, they did—and that authority was delegated to them by their own people.

The matter is of vital importance, for if the people of the states have delegated their power, they can also limit it, or take it away altogether.

It will not on careful consideration be long doubted that the peoples of the states can do both. The Florida Constitution, for example, in Article XVI, Section 19, provides as follows:

> "No convention nor legislature of this state shall act upon any amendment of the Constitution of the United States proposed by congress to the several states, unless such convention or legislature shall have been elected after such amendment is submitted."

This limitation upon the powers of the Florida legislature has been accepted without question, and if that, why not others? The amendment clause of the Constitution of the United States provides for amendment by popular convention. Can it be supposed for an instant that the peoples of the states cannot reserve the power of ratification to themselves and take it away from their legislatures altogether?

There can be no hesitation about the answer to these questions, and consequently, before any amendment to the Constitution is accepted as a part of the Constitution, the authority of the ratifying bodies should be inquired into and established. When the question is raised in the Federal courts, the duty to inquire into it is imperative under the Constitution, and no Federal court is at liberty to decline the investigation.

The "Eighteenth Amendment" involves the spoliation of the people and is an assault upon all their liberties, as has been already explained at length.

It is, therefore, a breach of the duty of loyalty which is imposed upon the legislators who voted for it and was in excess of their delegated authority, *ultra vires,* null and void.

Bill, Section X, paragraphs C, D, E, I, M, N, O, P, Q, R, S, T, U and V.

F.

The Two-thirds Rule.

We have hitherto discussed the "Eighteenth Amendment" from the point of view of substance as an invasion of reserved, inherent and inalienable rights.

We are now to approach it from the point of view of procedure, and are to consider whether it was validly adopted in accordance with the procedure prescribed by the Constitution of the United States for the proposal of amendments or additions to its own provisions.

Bill, Section X, paragraph L.

The Constitution directs in Article V that "the Congress whenever *two-thirds of both houses* shall deem it necessary, shall propose amendments to this Constitution." This article furnishes the only authority for Congress in the proposing of amendments and determines what action is necessary by that body before the constitutional process of amendment can be initiated. It calls for a vote of two-thirds of both houses, and the natural and normal significance of the phrase, the significance which immediately suggests itself, is that two-thirds of both houses means two-thirds of the full membership of each house. There has been an-

other interpretation of this phrase, however. It has been claimed that two-thirds of *the members present* is sufficient to meet the constitutional requirements.

That claim is necessary to support the present "amendment," because two-thirds of the full membership of both houses did not vote for the joint resolution which submitted it to the state legislatures. The validity of that proceeding is now the subject of our inquiry.

We have said that the obvious meaning of the phrase is that the concurrence of two-thirds of the full membership is requisite for the valid proposal of amendments. The argument to the contrary takes this form substantially:

> By the word "house" is intended a house organized for the transaction of business. A majority of a house constitutes a quorum for the transaction of business; therefore, it is concluded, a session of a "house" containing a quorum constitutes a "house" organized for the transaction of business, and a vote of two-thirds of the body so present comes within the constitutional requirements.

This argument gives to the word "house" a significance which attaches to no single word in the English language. "House" as applied to legislative bodies means either a legislative chamber of such a body or a quorum of such a chamber (see, for example, *Webster's Dictionary*). No dictionary gives any other meaning to it, and some dictionaries, such as the *Century*, do not even give it the meaning of "quorum." (For a full history of the word with

numerous quotations in chronological sequence see *Murray's New English Dictionary.*)

Now, when "house" denotes the chamber, it necessarily denotes the full membership of that chamber, which is a fixed number. When it denotes a quorum, it denotes a fraction of a membership of the chamber, usually a majority or the next integral number above a half, also a fixed number.

Neither of these meanings will satisfy the argument. The first, that the word "house" means the full membership, obviously defeats the argument, while the second leads to the following absurdity:

A quorum is a fixed number. Usually in our constitutions it is the next integral number above a half, and two-thirds of a quorum will in that case be the next integral number above a third of the whole. When three more than two-thirds of the whole are present, therefore, two-thirds of a quorum will be a minority. It follows, to a mathematical certainty, that if two-thirds of a quorum can propose amendments, then, when the whole membership is present, amendments can be proposed and carried by a minority vote, which is absurd.

What the argument has reference to, is a body which is not the full membership nor yet a quorum —both of which are fixed quantities—but a body which is composed of those members, not less in number than a quorum, who are actually present when the chamber is in session and transacting business. Such a body is not fixed in number, but fluctuates from a mere quorum as a minimum to the full membership as a maximum. It is usually, however, larger than the one and smaller than the other. There is no single word in the English language which designates it, and it certainly is not, and never has been, designated by the word

"house." The argument, therefore, gives to the word "house" a meaning which it has never possessed in the English language.

Again, the argument misapprehends the nature of a quorum, and because a quorum can *do* some of the business of the whole house the argument erroneously infers that it *is* the whole house.

This is a fundamental fallacy. A quorum does not become a whole house simply because it can do some of the things which the whole house can do. On the contrary, a quorum begins by being only a fixed fraction of the whole, and ends by being only a fixed fraction of the whole, and a fixed fraction never *is* and never *can become*, the whole. Whatever happens or can happen is that certain powers of the whole (never all the powers, however) are conferred upon the fraction, and that thereupon the acts of the fraction within the prescribed limits become the acts of the whole. It still remains true that, just as it is a fallacy to say that the agent *is* the principal because he can *do* some of the things which the principal can do, so it is a fallacy to say that the fraction *is* the whole because it can *do* some of the things which the whole can do.

Hitherto we have confined ourselves to pointing out defects in the argument which are not conditioned upon the terms of the instrument in which the word "house" is employed, but which would necessarily apply whenever such a phrase is used in any constitution. If possible the argument makes even a worse showing when it is collated with the full text of the Constitution itself.

In the first place, it commits a very real and wholly fatal *petitio principii*. It begs the question. It bases its conclusion upon the assumption in the premises that the conclusion is true. Consequent-

ly, if the conclusion is not true in the premise, it is not true in the conclusion; and in any event the argument is not advanced to the truth.

The assumption is that the word "house" means house as organized for the transaction of business. Now a House of Congress is organized for the transaction of most business when a majority, that is to say, a quorum, is present (Art. I, Sec. 5), but not for all business. The Senate is not organized for the business of trying the President on articles of impeachment unless the Chief Justice of the Supreme Court is present to preside over the trial (Art. I, Sec. 3). The House of Representatives is not organized for the business of electing a President in the case of a tie vote in the Electoral College unless representatives from two-thirds of the states are present (Art. II, Sec. 1). Either House is organized for the transaction of some business, such as the business of adjourning or of summoning absent members, even if less than a quorum is present (Art. I, Sec. 5). Neither House is organized for the business of proposing the amendments to the Constitution unless there are enough members present to give the vote which the Constitution requires.

If the Constitution requires the vote of two-thirds of the full membership, a house is not organized for the business of proposing amendments unless at least two-thirds of the full membership is present. If the Constitution is satisfied with the vote of two-thirds of the members present not less than a quorum, then the House is organized for the business of proposing amendments whenever not less than a quorum is present. The first alternative the argument denies; the latter is the very con-

clusion to be proved. The conclusion is not proved by making it the premise of the argument.

In the second place the argument ignores the constitutional definition of the word "house," just as it ignores the definition of it in common speech. The Constitution ordains that the Congress of the United States "shall consist of a Senate and House of Representatives" (Art. I, Sec. 1), that "the House of Representatives shall consist of members chosen every second year by the people of the several states" (Art. I, Sec. 2); and that "the Senate of the United States shall be composed of two senators from each state chosen by the legislature thereof" (Art. I, Sec. 3).

These are the definitions to which we must look when we would know the constitutional meaning of the word "house." When the Constitution says "both houses," it means the Senate and the House of Representatives. When it means the Senate, it means the body composed of two senators from each state chosen by the legislature thereof. When it means House of Representatives it means the chamber composed of members chosen every second year by the people of the several states. With these definitions contained in the Constitution itself, the conclusion is compulsory that two-thirds of both houses means two-thirds of the members chosen every second year by the people of the several states, and two-thirds of the senators from each state chosen by the legislature thereof.

In the third place the argument overlooks the general constitutional use of the word "house." There are, for example, five fractions of a legislative house mentioned at various times in the Constitution. Illustrations of these fractions are as follows:

"Two-thirds of both houses" (Art. II);

"Two-thirds of the members (of the Senate) present" (Art. I, Sec. 3);

"A majority of each (house)" (Art. I, Sec. 5);

"A smaller number (than a majority of each house)" (Art. I, Sec. 5);

"One-fifth of those (members of either house) present" (Art. I, Sec. 5).

In the last four of these fractions the whole house constitutes the unit of which the fraction is a part, and there is everything in the sequence to indicate that the same unit is assumed in the first fraction. If, for example, "a majority of each (house)" denotes a majority of the full membership, what does "two-thirds of both houses" mean? Again, outside of the name "House of Representatives," the word "house" is used twenty-two times in the Constitution, either expressly or by reference in an elliptical phrase. In nineteen instances it necessarily denotes the whole house composed of all its members. In the other three it is used in connection with the fraction two-thirds. If there had been any intention to give the word a different meaning in those three cases, some qualifying phrase would have been necessary to indicate it. The absence of any such qualifying phrase is conclusive proof that no difference was intended.

Still again, the Constitution provides (Art. II, Sec. 3) that the President "may on extraordinary occasions *convene both houses.*" Here obviously the President must convene the whole membership. If the phrase "both houses" means the whole house for the purposes of convening, what does it mean for the purpose of proposing amendments? If it had been intended to refer to different things

on different occasions, it would have been necessary to introduce a qualifying clause to distinguish them.

In all these instances we find the argument introducing a qualifying phrase in circumstances in which its absence conclusively proves that it was not intended.

In the fourth place the argument ignores those instances in which a distinguishing and qualifying phrase is actually employed in the Constitution. The necessity is to have the word "house" defined as that fluctuating body composed of members present, not less than a quorum, which is neither the fixed number of the full membership nor an equally fixed number of a quorum or majority, but the argument overlooks the fact that the Constitution employs a specific and appropriate phrase for that particular fraction of the membership. "*Two-thirds of the members present*" are necessary to a conviction by the Senate on articles of impeachment. "*One-fifth of those present*" may demand the yeas and nays (Art. I, Sec. 5); "*two-thirds of the senators present*" must concur in the making of a treaty (Art. II, Sec. 2). Now, if the Constitution uses a qualifying phrase in three instances, when the qualification was intended, why was it not used on all such occasions?

In the fifth place, in one of the three instances in which the two-thirds fraction is used in connection with the word "house," the argument produces an irremediable absurdity. When the President disapproves a bill passed by both houses, he returns it "to *that house* in which it shall have originated," who shall thereupon reconsider it, and "if after such reconsideration two-thirds *of that house* shall agree to pass the bill," it shall be sent

"to the other house" and "if approved by two-thirds *of that house* it shall become a law" (Art. I, Sec. 7).

One thing is clear in that veto clause of the Constitution: That legislative body *in* which a bill originates, *through* which it passes, *to* which it is returned by the President, and *by* which it is reconsidered and transmitted *to* the other house, is one and the same during the whole process—a legislative entity, unitary and continuing.

Now, only the house as a whole constitutes a legislative continuing entity. A quorum certainly does not fit the description. It disappears upon adjournment and does not come into existence again. When the house reconvenes, a new quorum is formed. Between sessions, there is no quorum at all. Consequently when the President returns a bill, he must return it to the whole house. He cannot return it to *that quorum* in which it originated. The same considerations apply even more strongly to that fluctuating body of members present which the argument requires. It disappears upon adjournment; it shifts and changes even during a continuous session; and a bill which originates in it cannot afterwards be returned to it.

Now observe the conclusion: if the words "that house" in the phrase requiring the President to return the bill to "that house in which it shall have originated" does not mean a quorum and does not mean the body of members not less than a quorum, but means the full membership of the house, then the phrase "that house" in the clause that "if after such reconsideration two-thirds of that house shall agree to pass the bill" must necessarily mean the full membership. Things which are equal to the same thing are equal to each other, and the whole house in which the bill originates must be the whole

house in which the reconsideration is to take place.

Furthermore, if two-thirds of the house in which the bill originates agrees to pass the bill, it shall then be sent to "the other house." What does "other house" mean in that phrase except the other of the two houses of a Congress consisting of the Senate and the House of Representatives?

The succeeding clause of that article of the Constitution relates to concurrent resolutions and declares that they shall not become a law unless "repassed by *two-thirds of the Senate and House of Representatives*, according to the Rules and Regulations prescribed in the case of a bill" (Art. I, Sec. 7). Here the requirement of a two-thirds vote of the whole house is expressly made, and at the same time, too, the regulations for bills are expressly made identical with the regulations for concurrent resolutions. There is no room for doubt that the word "house" in the veto clause means the whole house and not merely a quorum of it, and not merely that fraction of it which constitutes all the members present, not less than a quorum.

In the sixth place, and finally, the argument fails in the very clause under discussion. The Constitution provides the amendments to it may be proposed by a vote of "two-thirds of both houses" (Art. V). We cannot, however, make the substitution of words that ought to be possible if they mean the same thing. We cannot say that amendments may be proposed by two-thirds of both quorums; still less can we say that they may be proposed by two-thirds of both bodies of members present not less than a quorum. The Constitution does not say those things because it does not mean them.

This Court has held in the case of

Missouri Pacific Ry. Co. v. *Kansas*, 248 U. S., 276,

that the so-called Webb-Kenyon Law, regulating interstate traffic in liquors, was constitutionally passed by Congress over the President's veto, although it was only passed by a two-thirds vote of the Senators present and not by two-thirds of the whole Senate. It is therefore a decision relating to the two-thirds provision in Article I, Section 5 of the Constitution. It is not a decision as to the interpretation of the words "both houses" in the Fifth Article of the Constitution. It does indeed discuss the interpretation of the amendment clause, but its discussion is necessarily *obiter* and not conclusive. It is not, and cannot be, conclusive, either upon the rights of those who are not parties to that suit, or upon the interpretation of a clause of the Constitution not then before the Court for construction.

Even if the decision on the construction of the veto clause of the Constitution were conclusive upon the construction of the amendment clause in the same instrument, we should nevertheless contend that we are within our rights in asking the Court to re-examine it upon new grounds.

In constitutional questions there can be no doctrine of *stare decisis*, and the reason is this: No human tribunal is immune to the possibility of error—not even this Court, to which the people of this country so confidently look as the bulwark of their liberties. What happens, therefore, when it erroneously interprets, or erroneously applies, a constitutional provision? It has no power to amend

the Constitution, and the constitutional provision still remains the law. No number of judicial decisions can change the Constitution, and just as it is possible and proper for any attorney to challenge the constitutionality of an act of the state legislature or of Congress as repugnant to the Constitution, so it is possible and proper for an attorney to challenge any decision of this Court upon proper grounds as repugnant to the Constitution. In the exercise of that right and with the utmost respect to this Court, we submit here our reasons for believing that the decision of this Court in the *Missouri Pacific* case is repugnant to the Constitution, and that a bill is not passed over the President's veto unless it receives the votes of two-thirds of the full membership of both houses of Congress, and that an amendment is not constitutionally proposed to the states unless it receives the votes of two-thirds of the members of both houses.

We have already given some of the reasons sustaining our argument. It remains now to consider the opinion of this Court in the *Missouri Pacific* case.

The Court begins its consideration of the question by saying that

> "we might adversely dispose of it [that is, the contention that the bill was not properly passed over the President's veto by a vote of two-thirds of the full membership] by merely referring to the practice to the contrary which has prevailed from the beginning."

We submit, however, that no practice can change a constitutional provision, and no practice, con-

temporaneous or subsequent, is admissible to vary its terms. If the contrary were true, our Constitution would be but a scrap of paper, amendable, repealable, destructible, by the whim of any series of Congresses that might choose to disregard it.

The Court, further stating the contention of counsel, goes on to say:

> "As the context leaves no doubt that the provisions (*i. e.*, Art. I, Sec. 5) was dealing with the two houses as organized and entitled to exert legislative power, it follows that to state the contention is to adversely dispose of it."

With deference to the Court, we submit that, according to the context, to state the argument is to prove it. A house organized and entitled to exert legislative power is the whole house and not the quorum. When the yeas and nays are taken, the entire membership must be called, and the whole house is in session. Although only a quorum is present, the statute is enacted, as declared in the enacting clause, "By the Senate and House of Representatives of the United States of America in Congress assembled." The provision therefor necessarily means the whole house and not any fraction of it. Consequently the context sustains the argument instead of disposing of it adversely.

The Court goes on to say that the "erroneous assumption upon which the contention proceeds is plainly demonstrated by a consideration of the course of proceedings in the convention which framed the Constitution," and it thereupon refers to a record of those proceedings. Again we submit with deference that the course of proceedings in

the convention are quite immaterial to the interpretation of the Constitution. That instrument was submitted to the people as a completed whole. The proceedings of the Constitution were studiously kept from their cognizance and they were called upon to judge the instrument by its face and not by the preceding negotiations of which it was the outcome. Nothing, therefore, but the Constitution itself can be logically or lawfully the source of its interpretation.

The Court goes on to say:

> "A further confirmation of this view is afforded by the fact that there is no indication in the constitutions and laws of the several states existing before the Constitution of the United States was framed that it was deemed that the legislative body which had power to pass a bill over a veto was any other than the legislative body organized conformably to law for the purposes of enacting legislation, and hence that the majority fixed as necessary to override a veto was the required majority of the body in whom the power to legislate was lodged."

Granted, but again we submit with deference that the inference is quite the opposite to that which the Court drew. The body in whom the power to legislate is lodged is, as we have said before, the whole house, and the enactment of a bill is the act of the whole house and not the act of the mere quorum. That appears from the fact that the whole house must be called on roll call and from the enacting clause of all statutes.

The Court goes on to say:

> "Indeed, the absolute identity between the body having authority to pass legislation and the body having the power in case of a veto, to override it, was clearly shown by the Constitution of New York (1777), since that Constitution, in providing for the exercise of the right to veto by the council, directed that the objections to the bill be transmitted for reconsideration to the Senate, the house in which it originated; 'but if after such reconsideration, two-thirds of the said Senate or House of Assembly, notwithstanding the said objections, agree to pass the same, it shall * * * be sent to the other branch of the legislature, where it shall also be reconsidered and if approved by two-thirds of the members present, shall be a law'—thus identifying the bodies embraced by the words 'Senate' and 'House' and definitely fixing the two-thirds majority required in each as two-thirds of the members present."

Again, with deference we submit that the state constitution thus cited clearly establishes the distinction between two-thirds of the whole house and two-thirds of the members present, and that no interpretation of it is possible except that two-thirds of the whole house in which the bill originated was necessary to its repassage, although two-thirds of the members present of the other house was sufficient to make its repassage effective.

The Court goes on to say that

> "The identity between the provision of article V of the Constitution, giving the power by a two thirds vote to submit amendments, and the requirements we are considering as to the two-thirds vote necessary to override

> a veto, makes the practice as to the one applicable to the other."

It then proceeds to cite the record of the first session of Congress at which the first ten amendments to the Constitution were proposed. The records thus cited declare that the Senate concurred in the proposal of the amendments, "two-thirds of the senators present concurring therein," and that the house also concurred, "two-thirds of the members present concurring on each vote." Upon those records as a premise the Court declares that the first ten amendments were

> "all adopted and submitted by each house organized as a legislative body pursuant to the Constitution by less than the vote which would have been necessary had the constitutional provision been given the significance now attributed to it. Indeed, the resolutions by which the action of the two Houses was recorded demonstrate that they were formulated with the purpose of refuting the contention now made."

Again, with deference to this Court, we submit that proof that two-thirds of the members present concurred in the vote is not proof that two-thirds of the whole house did not concur. *Non constat* that more than two-thirds of the senators present concurred, enough to make two-thirds of the whole house, and *non constat* that the whole house was not present and that consequently two-thirds of the members present was not two-thirds of the whole house. Proof that twelve men did vote for a proposition is not proof that fifteen men did not vote for it. Some of the amendments seem to have been accepted unanimously.

The Constitution provides that the yeas and nays must be taken on the motion of one-fifth of the members present. It seems to have been the early practice not to record the yeas and nays except when so demanded, and it is more than probable that the record of the actual votes on the first ten amendments is lost forever. The resolution by which the amendments were submitted to the state legislatures reads, "Two-thirds of both Houses concurring," and under those circumstances the formal record of the adoption of the amendments pursuant to the requirements of Article V is complete. There can be no real question that the first ten amendments were properly adopted.

The Court then goes on to say:

> "The construction which was thus given to the Constitution in dealing with a matter of such vast importance, and which was necessarily sanctioned by the states and all the people, has governed as to every amendment to the Constitution submitted from that day to this. This is not disputed and we need not stop to refer to the precedents demonstrating its accuracy. The settled rule, however, was so clearly and aptly stated by the Speaker, Mr. Reed, in the House, on the passage in 1898 of the amendment to the Constitution providing for the election of Senators by vote of the people, that we quote it."

Mr. Reed's remarks are then quoted as follows:

> "The question is one that has been so often decided that it seems hardly necessary to dwell upon it. The provision of the Constitution says 'two-thirds of both houses.' What constitutes a house? A quorum of the membership, a majority, one-half and one

> more. That is all that is necessary to constitute a house to do all the business that comes before the House."

This passage cited from the ruling of Speaker Reed excellently illustrates the confusion which has attended the discussions of this problem. He says that a majority of the house is one-half and one more. It may on occasion, that is, when the number of members is uneven, be one-half and *one half* more. Mr. Reed also says that a majority is all that is necessary to constitute a house to do the business that comes before the house. That again is not correct. On some matters, as we have seen, more than a majority is necessary for the transaction of business by a house. Thus the House of Representatives cannot elect a President in the case of a tie vote in the Electoral College unless Representatives of two-thirds of the states are present. These errors in Mr. Reed's ruling detract greatly from its authority. Moreover, it cannot be reiterated too often that the Constitution cannot be changed by practice or by the rulings of presiding officers. It prescribes its own methods of amendment, and the practices and rulings of the House of Congress are not among them.

After again referring to the practice as to the adoption of amendments to the Constitution and the practice of voting on repassage of bills over presidential veto, the Court cites a number of cases in other jurisdictions among the state courts. They arise, of course, under other instruments than the Constitution of the United States, and consequently are not conclusive as to that instrument. Above all, they cannot override it.

Our examination of the opinion of this Court in the *Missouri-Pacific* case discloses the following facts:

1. It does *not* discuss the meaning of the word "house" in the English language; on the contrary, it gives it a meaning which has no precedent.

2. It does *not* consider the constitutional definitions of the Senate and House of Representatives which constitute "both Houses."

3. It does *not* discuss the general use of the word "house" in the Constitution, either in connection with the various fractions of a house or in its general connections.

4. It does *not* discuss the constitutional phrase "two-thirds of the members present," or its significance in indicating that when the Constitution intends that fraction, it uses that phrase to indicate its intention.

5. It does *not* discuss the possibility of substituting its definition of the word "house" in place of the language used in the Constitution.

6. It does *not* discuss the difference between a quorum and the body of members present, not less than a quorum. Apparently it confuses the two, because in one place it speaks of "a two-thirds vote of the senators present (a quorum)," and in another place it speaks of "a quorum (a majority) of the members of each House (Sec. 5, Art. I)."

7. It does *not* contain any reference to the text of the Constitution, except a brief reference to the "context" of the instrument and

to the "identity" between the veto provisions and the amendment provisions of the Constitution.

8. It *does* discuss the proceedings in the Constitutional Convention.

9. It *does* discuss "the constitution and laws of the several states existing before the Constitution of the United States was framed."

10. It *does* discuss the practice in adopting amendments to the Constitution.

11. It *does* discuss some of the records of Congress.

12. It *does* discuss certain rulings in Congress.

13. It *does* discuss certain judicial decisions rendered in the state courts under other instruments.

14. In fine, it *does* discuss many collateral matters, but it does *not* discuss the instrument to be construed.

The dominating feature of the opinion is the constant references to the practice in adopting the prior amendments of the Constitution; and undoubtedly, if the requirements of the Constitution have not been followed in adopting them, a grave and serious problem is certainly presented. It may be that some of the amendments have not in fact become a "part of the Constitution." There seems to be no ground for apprehension concerning the first ten amendments, because the joint resolution of the houses of Congress conforms to the constitu-

tional requirements, and the possibility of disputing the accuracy of its recital that two-thirds of both houses concurred in it has probably disappeared by the lapse of time. As to the later amendments, however, there may be some doubt, and it may be that the doubt can only be resolved by an examination of the original records of the Congressional proceedings. If that is so, the matter should be immediately determined. The American people cannot afford to leave its organic law in doubt. Above all, it cannot afford to have its organic law depend upon an interpretation of a word which is without historic precedent, or upon an interpretation which does not take into account the definitions of the word which the organic law itself contains.

POINT VI.

In Conclusion.

Upon all grounds we submit that the bill should be filed. It is within the jurisdiction of the Court with respect to subject-matter and parties, and it is sufficient on its merits.

New York, January 2, 1919.

EDWARD HOLLANDER,
Solicitor for Defendants.

EVERETT V. ABBOT,
GEORGE W. TUCKER,
BENJAMIN TUSKA,
of Counsel.

Supreme Court of the United States.

OCTOBER TERM, 1919.

No. Original.

In Equity.

WILLIAM DUHNE, Complainant,

against

THE STATE OF NEW JERSEY, A. MITCHELL PALMER, ATTORNEY GENERAL OF THE UNITED STATES; JOSEPH L. BODINE, UNITED STATES ATTORNEY IN AND FOR THE DISTRICT OF NEW JERSEY, AND DANIEL C. ROPER, COMMISSIONER OF INTERNAL REVENUE OF THE UNITED STATES, Defendants.

On Rule to Show Cause why leave should not be granted to file original Bill of Complaint.

SPECIAL APPEARANCE OF THE STATE OF NEW JERSEY, ON RETURN OF RULE TO SHOW CAUSE.

THE STATE OF NEW JERSEY,
By THOMAS F. McCRAN,
Attorney-General.

Supreme Court of the United States.

OCTOBER TERM, 1919.

No. Original.

In Equity.

WILLIAM DUHNE, Complainant.

against

THE STATE OF NEW JERSEY, A. MITCHELL PALMER, ATTORNEY GENERAL OF THE UNITED STATES; JOSEPH L. BODINE, UNITED STATES ATTORNEY IN AND FOR THE DISTRICT OF NEW JERSEY, AND DANIEL C. ROPER, COMMISSIONER OF INTERNAL REVENUE OF THE UNITED STATES, Defendants.

SPECIAL APPEARANCE OF STATE OF NEW JERSEY, ON RETURN OF RULE TO SHOW CAUSE FOR LEAVE TO FILE BILL OF COMPLAINT.

Now comes the State of New Jersey, by Thomas F. McCran, Attorney-General thereof, in obedience to the command of a rule to show cause made on the twenty-second day of December, nineteen hundred and nineteen, appearing specially and solely for the purpose of objecting to the jurisdiction of this court as to the State of New Jersey, a party defendant, and asks that permission to file said original bill of complaint against the State of New Jersey be denied, and rests its request upon the following grounds:

I. The bill of complaint discloses that the complainant is a citizen of the State of New Jersey, and is, therefore, barred from instituting an action against the State of New Jersey without its consent.

II. The consent of the State of New Jersey to the filing of said bill or the institution of this action has not been granted by said State, and said State refuses to consent thereto.

III. This Honorable Court is without jurisdiction over the State of New Jersey in the premises.

GENERAL STATEMENT.

The State of New Jersey has been served with a rule to show cause why a motion for leave to file a bill of complaint in the Supreme Court of the United States on behalf of the complainant above and against the defendants named above, including the State of New Jersey, should not be granted. This is an original bill in the Supreme Court. In substance, it alleges that the complainant, who is engaged in the business of selling liquor at West New York in the State of New Jersey, will be injured by the enforcement of the Eighteenth Amendment of the Constitution of the United States and the act of Congress entiled "An act to prohibit intoxicating beverages and to regulate the manufacture, production, use and sale of high-proof spirits for other than beverage purposes and to insure an ample supply of alcohol and promote its use in scientific research and in the development of fuel, dye and other lawful industries," and prays the court to restrain, by injunction, the defendants and each of them from doing anything to enforce the said amendment and the said statute. The State of New Jersey is named as a party defendant in its sovereign capacity. The bill prays that process may be directed to and an injunction issued against the State. The complainant sets forth in said complaint that he is a citizen of the State of New Jersey.

The bill of complaint, therefore, presents this state of facts: A citizen of the State of New Jersey requests the Supreme Court of the United States, in the exercise of its

original jurisdiction, to entertain a suit against the State of New Jersey, without the consent of said State.

Mr. Justice Miller, in *Cunningham* v. *Macon and New Brunswick Railroad*, 109 *U. S.* 446, 451, says:

> "It may be accepted as a point of departure unquestioned that neither a State nor the United States can be sued as defendant in any court in this country without their consent, except in the limited class of cases in which a State may be made a party in the Supreme Court of the United States by virtue of the original jurisdiction conferred on this court by the Constitution."

It is respectfully urged that this case is not within the exception.

POINT 1.

THE STATE OF NEW JERSEY CANNOT COMPULSORILY BE MADE A SUITOR IN AN ORIGINAL ACTION IN THE SUPREME COURT OF THE UNITED STATES INSTITUTED BY A CITIZEN OF SAID STATE.

The pertinent parts of the Constitution are as follows:

Article III.

Section 1.

> The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish. * * *

Section 2.

> 1. The judicial power shall extend to all cases in law and equity, arising under this Constitution, the laws of the United States, and treatises made, or

which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects.

2. In all cases affecting ambasadors, other public ministers and consuls, and those in which a state shall be a party the Supreme Court shall have original jurisdiction. In all other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

In *Louisiana* v. *Texas*, 176 *U. S. at page* 16, the Court says:

> "The language of the second clause of the second section of Article III of the Constitution, 'in all cases in which a State shall be a party' means in all the enumerated cases in which a State shall be a party, and this is stated expressly when the clause speaks of the other cases where appellate jurisdiction is to be exercised. This second clause distributes the jurisdiction conferred in the previous one into original and appellate jurisdiction, but does not profess to confer any. The original jurisdiction depends solely on the character of the parties and is confined to the cases in which are those enumerated parties and those only."

The above quoted provisions of the Constitution were modified by the Eleventh Amendment as follows:

> "The judicial power of the United States shall not be construed to extend to any suit in law or

equity commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State."

In *California* v. *The Southern Pacific Company*, 157 *U. S.* 229, Chief Justice Fuller, in his dissenting opinion uses the folowing language:

"If by virtue of the subject matter, a case comes within the judicial power of the United States, it does not follow that it comes within the original jurisdiction of this court. That jurisdiction does not obtain simply because a State is a party. Suits between a State and its own citizens are not included within it by the Constitution."

A suit directly against a State by one of its own citizens is not one to which the judicial power of the United States extends, unless a State itself consents to be sued.

Hans v. *Louisana*, 134 *U. S. Rep.* 1.

North Carolina v. *Temple*, 134 *U. S. Rep.* 22.

Fitts v. McGhee 172 U.S. 516-524

In *Osborn* v. *The Bank of the United States* (9 *Wheat. Reports, p.* 846), Chief Justice Marshall says:

"In cases where a State is a party on the record, the question of jurisdiction is decided on inspection."

LEAVE TO FILE THE BILL OF COMPLAINT AGAINST THE STATE OF NEW JERSEY SHOULD BE DENIED.

THE STATE OF NEW JERSEY,
By THOMAS F. MCCRAN,
Attorney-General.

In the Supreme Court of the United States.

OCTOBER TERM, 1919.

WILLIAM DUHNE, COMPLAINANT,
v.
THE STATE OF NEW JERSEY et al., defendants.
} No. —, Original.

RESPONSE TO ORDER TO SHOW CAUSE.

In response to the order of the court to show cause, the defendants, A. Mitchell Palmer, Attorney General of the United States; Joseph L. Bodine, United States attorney for the District of New Jersey; and Daniel C. Roper, Commissioner of Internal Revenue, say that the bill wholly fails to state a case of which this court can take original jurisdiction.

I.

The bill is an effort to attack the validity of the eighteenth amendment to the Constitution, which is as follows:

> SECTION 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

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> SEC. 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

Congress, on October 28, 1919, passed an act known as the "Volstead Act," which provides, in detail, for the enforcement throughout the United States of this amendment.

The plaintiff is a citizen of the State of New Jersey, engaged in that State in the business of a liquor dealer, and seeks now to enjoin the enforcement of the Volstead Act. It is not claimed that that act is invalid if the eighteenth amendment is valid and a part of the Constitution. The validity of the amendment, however, is assailed on various grounds.

The defendants named in the bill are the State of New Jersey, the Attorney General of the United States, the district attorney for the District of New Jersey, and the Internal Revenue Commissioner of the United States. The reason alleged for making these parties defendants is that the amendment provides that the States shall have concurrent power with Congress to enforce the amendment by appropriate legislation, and that under the Volstead Act the duty of enforcing the provisions of that act are imposed upon the Department of Justice and the Commissioner of Internal Revenue.

The controversy is alleged to be one between a citizen of the State of New Jersey, on the one hand, and the State of New Jersey and certain officials of the United States on the other. The prayer is that the Federal officials named be enjoined, either per-

sonally or through their subordinates, agents, or employees, from interfering with the business of the plaintiff as a liquor dealer or using the name or authority of the United States of America or of the State of New Jersey in any proceedings in law or in equity against the plaintiff in any court of the United States or any court of the State of New Jersey on account of any alleged violation of the provisions of the eighteenth amendment or the Volstead Act. There is no prayer for relief against the State of New Jersey, and the only allegation in the bill relating in the remotest degree to any action contemplated by that State is the following:

> There is grave danger that the defendant the State of New Jersey may against its will and by force of arms or otherwise be compelled to aid and assist the defendants A. Mitchell Palmer, Daniel C. Roper, and Joseph L. Bodine in the attempted enforcement of the bill aforesaid, and of the so-called Eighteenth Amendment to the Constitution of the United States, all in violation of its sovereign rights guaranteed to it as a sovereign State by the Constitution of the United States.

II.

Apparently the theory of the bill is that the naming of a State as a defendant gives this court original jurisdiction under the second paragraph of section 2 of Article III of the Constitution, which is as follows:

> In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in

which a State shall be Party, the supreme Court shall have original Jurisdiction.

There are two conclusive answers:

1. The bill does not present any controversy between the plaintiff and the State of New Jersey and prays for no relief against that State.

2. The plaintiff is a citizen of the State of New Jersey, and, consequently, if a controversy existed between him and that State, this court would not have original jurisdiction thereof. Article III, section 2, of the Constitution, in defining the cases to which the judicial power of the United States shall extend, includes within that power controversies "between a State and citizens of another State," but does not include controversies between a State and its own citizens.

As to controversies between a State and citizens of other States, the Eleventh Amendment denies to the United States court jurisdiction where such suit is brought against the State as a defendant. *Hans* v. *Louisiana*, 134 U. S. 1, 15, et seq.

III.

The real controversy sought to be presented by the bill is one between the plaintiff and officials of the United States Government, who are charged with a purpose to destroy the plaintiff's business under the color of a law which is, in fact, no law. This court is wholly without original jurisdiction over such controversy.

1. If the case be treated as one against the defendants as individuals, it could not be claimed for a

moment that the suit could be commenced in this court. If the controversy is one which would be cognizable in any Federal court, this court, under section 2 of Article III of the Constitution, would have only appellate jurisdiction.

2. If it be treated as, in fact, a suit against the United States, it is equally plain that jurisdiction fails.

(*a*) A suit by an individual against the United States is not one of the cases in which the section of the Constitution above quoted confers original jurisdiction upon this court.

(*b*) The United States can not be sued in any court except when it has consented thereto. (*Stanley* v. *Schwalby*, 162 U. S. 255, 269, 270.) It has not consented to be sued except in the Court of Claims and the District Courts of the United States, as provided in sections 24 (20) and 145 of the Judicial Code.

It is respectfully submitted that, in no possible view of the case, does the bill present a controversy of which this court has original jurisdiction.

ALEX. C. KING,
Solicitor General.
WILLIAM L. FRIERSON,
Assistant Attorney General.

DECEMBER, 1919.

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IN THE

SUPREME COURT OF THE UNITED STATES.

IN RE PETITION OF JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF OTTO E. ANDERSON, DECEASED, JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF ELIZABETH HARKE, DECEASED, JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF ROBERT J. T. RIKER, DECEASED, JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF JOHN E. WILKINSON, DECEASED, AND ROSIE ALBERTZ, ADMINISTRATRIX OF THE ESTATE OF MARY ALBERTZ, DECEASED, FOR A WRIT OF PROHIBITION.

MOTION TO FILE PETITION AND BRIEF IN SUPPORT OF SAID MOTION.

HARRY W. STANDIDGE,
PROCTOR.

BARNARD & MILLER PRINT, CHICAGO.

IN THE

Supreme Court of the United States

IN RE PETITION OF JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF OTTO E. ANDERSON, DECEASED, JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF ELIZABETH HARKE, DECEASED, JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF ROBERT J. T. RIKER, DECEASED, JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF JOHN E. WILKINSON, DECEASED, AND ROSIE ALBERTZ, ADMINISTRATRIX OF THE ESTATE OF MARY ALBERTZ, DECEASED, FOR A WRIT OF PROHIBITION.

MOTION TO FILE PETITION, AND BRIEF IN SUPPORT OF SAID MOTION.

And now come James F. Bishop, Administrator of the Estate of Otto E. Anderson, Deceased, James F. Bishop, Administrator of the Estate of Elizabeth Harke, Deceased, James F. Bishop, Administrator of the Estate of Robert J. T. Riker, Deceased, James F. Bishop, Administrator of the Estate of John E. Wilkinson, Deceased, and Rosie Albertz, Administratrix of the Estate of Mary Albertz, Deceased, and move the court for leave to file a petition for a

Writ of Prohibition, which petition is herewith presented to the court.

JAMES F. BISHOP,
Administrator of each of said Estates of Otto E. Anderson, Deceased, Elizabeth Harke, Deceased, Robert J. T. Riker, Deceased, and John E. Wilkinson, Deceased.

ROSIE ALBERTZ,
Administratrix of the Estate of Mary Albertz, Deceased.

HARRY W. STANDIDGE,
Proctor.

IN THE

Supreme Court of the United States

IN RE PETITION OF JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF OTTO E. ANDERSON, DECEASED, JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF ELIZABETH HARKE, DECEASED, JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF ROBERT J. T. RIKER, DECEASED, JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF JOHN E. WILKINSON, DECEASED, AND ROSIE ALBERTZ, ADMINISTRATRIX OF THE ESTATE OF MARY ALBERTZ, DECEASED, FOR A WRIT OF PROHIBITION.

BRIEF IN SUPPORT OF MOTION.

Petitioners pray for a writ of prohibition, and such other relief as to the court may seem meet, to prevent the carrying out of orders entered in a proceeding brought by the St. Joseph-Chicago Steamship Company to limit its liability as owner of the steamer Eastland, the tipping over of which steamer in the Chicago River on July 24, 1915, caused the deaths of the above named, and more than 800 other, deceased persons, by which orders the court has allowed and directed the payment of the claim of the Great Lakes Towing Company for $34,500, with interest, under a contract made by it with said St. Joseph-Chicago Steamship Company for the raising of said steamer after it tipped over, upon pro-

ceedings had and taken by said Great Lakes Towing Company before the appointment of your petitioners as administrator and administratrix of said estates of said above named deceased persons, and before they had appeared, and before the expiration of the time described in the monition and fixed by the court for them to appear, in said proceeding, and without notice to them, and which said orders also were entered by the court after your petitioners and several hundred other claimants who are in like situation with them, with pleadings on file questioning the jurisdiction of the court, had been deprived of a hearing by being in effect defaulted and otherwise denied due process of law; and the court, also, after so entering said orders, denied petitioners an appeal therefrom.

Said limitation proceeding was begun on August 17, 1915, after said steamer had been raised under said contract, and a monition was issued and executed by publication in said proceeding, citing "all persons claiming damages for any loss, destruction or injury occasioned by the listing, turning over and sinking of the said steamer," to appear and make proof of their claims and answer said limitation petition on or before the first Monday in December, 1915, "or within such further time as this court may grant," a copy of which monition is attached to the petition (pp. 14-16), presented herewith, and the court, on December 6, 1915, and various subsequent dates, entered orders extending the time to file and make proof of claims until August 5, 1916, and extending the time to answer or except to said petition until August 15, 1916.

On and prior to January 18, 1916, which was before your petitioners were appointed as administrator and administratrix of said estates of said above named deceased persons, and before they, or any of them, or any of the parties whom they represent as administrator and administratrix of said estates, had appeared, and before the expiration of the time described in the monition and fixed by the court for them to appear, in said limitation proceeding, and without notice to them, or any of them, said Great Lakes Towing Company took the following action in said proceeding: On September 1, 1916, it filed a petition or claim, which it has never at any time had any rule entered upon any one to plead to, alleging that it raised said steamer under said contract, and praying the court to pronounce in favor of its said claim and grant to it a "preferred, paramount and first lien on said steamer;" on December 20, 1915, by order of court, it procured the sale of said steamer, and on January 3, 1916, had the proceeds of said sale paid into court; on said 3d day of January, 1916, also, it filed a written motion asking that an order be entered directing the payment of its said claim, on January 7, 1916, it served notice on the comparatively few claimants (not including your petitioners), who at that time had appeared in said proceeding, that on January 17, 1916, it would introduce evidence "in support of said motion," and on January 18, 1916, it introduced the only evidence introduced at any time in said proceeding in regard to its said claim, which evidence tended to show the performance by it of its said contract on which it based its said claim.

Your petitioners were appointed as administrator

and administratrix of said estates of said above named deceased persons on February 2, 1916, July 13, 1916, and July 19, 1916, and on July 22, 1916, in said limitation proceeding, they filed verified claims for the deaths of said deceased persons for $10,000 each, as allowed by the admiralty laws and the laws of the State of Illinois, and on July 31, 1916, they filed exceptions to said petition and objections to the allowance of said claim of said Great Lakes Towing Company, and a motion that said evidence which said Great Lakes Towing Company introduced on January 18, 1916, be expunged from the record, and that said claim and any and all relief asked by said Great Lakes Towing Company be denied, for the reasons that said evidence was introduced without notice to petitioners, and each of them, and without said petitioners, or any of them, being present or represented at the hearing thereof, and also for reasons set forth in said exceptions so filed by your petitioners to said petition, as aforesaid, which said exceptions, objections and motion are the only pleadings at any time filed by your petitioners, or any of them, to or in regard to said petition or claim or motion of said Great Lakes Towing Company, and copies of which are attached to the petition (pp. 17-22) presented herewith, and on August 14, 1916, petitioners filed exceptions to said limitation petition in said proceeding, all of which action was taken by your petitioners within said time described in the monition and fixed by the court for such purpose as aforesaid, and like action was taken by several hundred other tort claimants who are in like situation with your petitioners.

On August 16, 1916, the court heard arguments upon said exceptions filed by petitioners to said petition of said Great Lakes Towing Company, and took the matter under advisement, and on November 3, 1916, upon consideration of said petition and claim and motion of said Great Lakes Towing Company, and the pleadings thereto, including answers of various parties other than your petitioners (no answer thereto having at any time been filed by any of your petitioners), and said exceptions to said petition and objections to the allowance of said claim, filed by your petitioners and other claimants, said evidence introduced by said Great Lakes Towing Company on January 18, 1916, and said motion filed by your petitioners to have said evidence expunged from the record and said claim and any and all relief asked by said Great Lakes Towing Company denied, and the same, or a similar, motion filed by other claimants, and the court, for the reasons above set forth, having no jurisdiction to grant said relief, or any part thereof, found that "said Great Lakes Towing Company is not entitled to the relief prayed for by it in its said petition and motion to have its said claim decreed a preferred, paramount and first lien on said steamer or the proceeds thereof," and ordered "that said prayer of said petition and motion be and the same are hereby denied," a copy of which order is attached to said petition (pp. 22-23) presented herewith.

The Court of Appeals, on the appeal taken from said order thereto by said Great Lakes Towing Company, and on the same, and only the same, record on which said District Court acted, denied a motion

made by petitioners and other claimants to dismiss said appeal on the ground that said order appealed from was not a final or appealable order or decree, and reversed same and remanded the cause with directions to allow said claim, with interest and costs, and thereupon said District Court, on the application of life salvor claimants who had intervened, entered an order allowing said claim in accordance with the mandate of said Court of Appeals, and shortly thereafter entered another order or decree sustaining exceptions to the claims of said life salvors and allowing said claim of said Great Lakes Towing Company as a "first, preferred and paramount lien against the funds now in the registry of this court arising from the sale of the steamer Eastland," from which order said life salvors have appealed and filed their appeal bond, thereby staying the carrying out of said decree until said appeal shall be disposed of, and the court has entered an order denying petitioners' application for an appeal from said orders, copies of which said orders are set forth in said petition (pp. 8, 23-26) presented herewith.

BRIEF.

I.

THE COURT HAD NO JURISDICTION TO ENTER, AND IT TRANSCENDED ITS POWER AND AUTHORITY IN ENTERING, THE ORDERS COMPLAINED OF, AND THE RELIEF WHICH PETITIONERS PRAY FOR SHOULD BE GRANTED.

Ex Parte Indiana Trans. Co., Pet'r., 244 U. S. 456.

Ex parte Poultney v. *City of La Fayette et al.*, 12 Pet. (37 U. S.), 472, 474-5.

In re Eastern Dredging Co., 159 Fed. 549, 551.

Montgomery, et al., Claimants of Steamer Republic, v. *Anderson*, 21 How. (62 U. S.), 386, 387-8.

Great Lakes Towing Co. v. *St. Joseph-Chicago Steamship Co.*, 253 Fed. 635, 638.

Coe v. *Armour Fertilizer Works*, 237 U. S. 413, 424-5.

Galpin v. *Page*, 18 Wall. (85 U. S.) 350, 368-9.

Windsor v. *McVeigh*, 93 U. S. 274, 277.

Baker v. *Baker, Eccles & Co.*, 242 U. S. 394, 403.

Postal Tel. Cable Co. v. *City of Newport, Ky.*, 247 U. S. 464, 476.

ARGUMENT.

I.

THE COURT HAD NO JURISDICTION TO ENTER, AND IT TRANSCENDED ITS POWER AND AUTHORITY IN ENTERING, THE ORDERS COMPLAINED OF, AND THE RELIEF WHICH PETITIONERS PRAY FOR SHOULD BE GRANTED.

In *Ex Parte* Indiana Trans. Co., Petitioner, 244 U. S. 456, which case also arose out of said Eastland disaster, a writ of prohibition was granted to prevent the carrying out of an order directing petitioner to answer an amended libel filed by the original and additional libellants, because petitioner had been served only with a monition citing him to appear to answer the libel of said original libellant, and he was not bound by said order entered as to said additional libelants before being required by proper process to appear and answer unto them.

In *Ex Parte Poultney* v. *City of La Fayette, et al.*, 12 Pet. (37 U. S.) 472, upon an affidavit stating, *inter alia*, that there were upwards of two hundred defendants, and that time in addition to that named in the process citing them was necessary to make proper defense and secure the ends of justice, the court entered a rule upon complainants to show cause why defendants should not be allowed additional time to appear and defend, and ordered that in the meantime "no further step or proceeding be

had in the case." Complainants moved to proceed under the equity rules of the Supreme Court, under which "the complainants would have been entitled to proceed on their bill as confessed, if the defendants did not appear and file their answer within three months after the day of appearance limited to these rules." The motion was denied, and the court said (pp. 474-5):

> "We think the court did right in refusing this motion. Every court of equity possesses the power to mould its rules in relation to the time and manner of appearing and answering, so as to prevent the rule from working injustice; and it is not only in the power of the court, but it is its duty, to exercise a sound discretion upon this subject, and to enlarge the time, whenever it shall appear that the purposes of justice require it. The rules prescribed by this court do not, and were not intended to, deprive the courts of the United States of this well-known and necessary power; and the facts stated in the affidavit before referred to, certainly presented a case in which it was proper to exercise it."

In the proceeding in question herein, there were upwards of one thousand claimants.

In *In re* Eastern Dredging Co., 159 Fed. 549, 551, it is said:

> "Each damage claimant has the right to be heard in opposition to every other claim."

In the proceeding in question herein, petitioners appeared and filed their claims and pleaded to the limitation petition within the time described in the monition and fixed by the court for them so to do, and they were not bound by the proceedings previously taken therein, without notice to them by said Great Lakes Towing Company, which company was

not cited by said monition, which cited only "persons claiming damages for any loss, destruction or injury occasioned by the listing, turning over and sinking of the said steamer."

After petitioners did appear and file exceptions to said petition and objections to the allowance of the claim of said Great Lakes Towing Company, and a motion to expunge from the record the evidence introduced by it without notice to them and before they appeared in said proceeding, and to deny the relief which it asked, neither the District Court nor the Court of Appeals had any jurisdiction to allow, or direct the allowance or payment of, said claim of said Great Lakes Towing Company without first passing upon said exceptions to its said petition and said motion to strike out said evidence and deny it the relief which it asked for, and until such motions were passed upon, petitioners could not properly, and they were not required to, proceed further. The District Court, on said pleadings and procedure thereunder, found that said Great Lakes Towing Company was not entitled to the lien which it prayed for, and denied the prayer of its said petition and motion for such lien. Whether this was or was not a final order, the Court of Appeals had no jurisdiction to set aside the same and direct the allowance of said claim of said Great Lakes Towing Company, without first passing upon petitioners' said exceptions to said petition of said Great Lakes Towing Company, and their said motion to expunge said evidence which it introduced, and deny it said relief which it asked, and giving petitioners an opportunity to be heard upon the various questions of fact involved, including the reason-

ableness of the amount of said claim, if said exceptions should be overruled and said motion denied, and the fact that it denied such rights to petitioners and directed the allowance of said claim, did not give the District Court jurisdiction to allow and direct the payment of said claim. (See *Montgomery et al., Claimants of Steamer Republic*, v. *Anderson*, 21 How. (62 U. S.) 386, 387-8.)

The Court of Appeals in the proceeding in question (253 Fed. 635, 638), said:

> "Though some of the appellees in their pleadings challenged the amount of the consideration, they offered no evidence to prove that it was unfair."

Manifestly petitioners could not properly have introduced any such evidence before the court passed upon the preliminary questions of law raised by their said pleadings, and the court had no jurisdiction to, in effect, default them and deny them a hearing because they did not do so.

The Court of Appeals seems to have overlooked the fact that petitioners and several hundred other claimants who had not appeared in said limitation proceeding when said action was taken by said Great Lakes Towing Company in regard to its said claim had not been heard in reference thereto, and that they should be heard upon the reasonableness of the amount of the claim involved, even if all other questions should be determined against them.

In *Coe* v. *Armour Fertilizer Works*, 237 U. S. 413, 424-5, the court said that it was contended that the complaining party "in fact learned of the execution before his property was sold or even his possession

was disturbed, and he had an opportunity for a hearing in the present proceeding as to all questions upon which his liability depended," and the court added:

> "The fallacy of this is that it ignores the issue of law raised by the petition of plaintiff in error, and substitutes an issue of fact for which he was not summoned and which he has not consented to litigate. * * *
>
> Nor can extra-official or casual notice, or a hearing granted as a matter of favor or discretion, be deemed a substantial substitute for the due process of law that the Constitution requires. In *Stuart* v. *Palmer*, 74 N. Y. 183, 188, which involved the validity of a statute providing for assessing the expense of a local improvement upon the lands benefited, but without notice to the owner, the court said: 'It is not enough that the owners may by chance have notice, or that they may as a matter of favor have a hearing. The law must require notice to them, and give them the right to a hearing and an opportunty to be heard.'"

In *Galpin* v. *Page*, 18 Wall. (85 U. S.) 350, 368-9, it is said:

> "It is a rule as old as the law, and never more to be respected than now, that no one shall be personally bound until he has had his day in court, by which is meant, until he has been duly cited to appear, and has been afforded an opportunity to be heard. Judgment without such citation and opportunity wants all the attributes of a judicial determination; it is judicial usurpation and oppression, and can never be upheld where justice is justly administered."

In *Windsor* v. *McVeigh*, 93 U. S. 274, 277, the court says:

> "A sentence of a court pronounced against a

> party without hearing him, or giving him an opportunity to be heard, is not a judicial determination of his rights, and is not entitled to respect in any other tribunal."

The court then states that in *Woodruff* v. *Taylor*, 20 Vt. 65, the subject of proceedings *in rem* is "elaborately considered," and that it was therein observed that "it was just as material to the validity of a judgment *in rem* that constructive notice at least should appear to have been given as that actual notice should appear upon the record of a judgment *in personam*." And the court, quoting from the opinion in that case, adds:

> "'A proceeding,' continued the court, 'professing to determine the right of property, where no notice, written or constructive, is given, whatever else it might be called, would not be entitled to be dignified with the name of a judicial proceeding. It would be a mere arbitrary edict, not to be regarded anywhere as the judgment of a court.'"

The court also says (p. 282), that "though the court may possess jurisdiction of a cause, of the subject-matter and of the parties, it is still limited in its modes of procedure, and in the extent and character of its judgments. It must act judicially in all things, and cannot then transcend the power conferred by law," and that a judgment will be "absolutely void" if the court shall "transcend the limits of its authority."

And the court further states (pp. 283-4) that "jurisdiction is the right to hear and determine; not to determine without hearing."

In *Baker* v. *Baker, Eccles & Co.*, 242 U. S. 394, 403, it is said:

> "The fundamental requisite of due process of law in judicial proceedings is the opportunity to be heard. *Louisville & Nashville R. R. Co.* v. *Schmidt*, 177 U. S. 230, 236; *Simon* v. *Graft*, 182 U. S. 427, 436; *Grannis* v. *Ordeau*, 234 U. S. 385, 394. To hold one bound by the judgment who has not had such opportunity is contrary to the first principles of justice."

In *Postal Tel. Cable Co.* v. *City of Newport, Ky.*, 247 U. S. 464, 476, the court states:

> "The opportunity to be heard is an essential requisite of due process of law in judicial proceedings."

In the proceeding in question in the case at bar, in addition to having no jurisdiction to enter said orders allowing and directing the payment of said claim of said Great Lakes Towing Company because petitioners were deprived of a hearing, the court also had no jurisdiction to enter said orders without first determining the questions as to the right of said limitation petitioner to the limitation prayed for, and what the respective rights of your petitioners and said Great Lakes Towing Company consequent upon such determination are, and the court after having entered said orders had no jurisdiction to deny your petitioners an appeal therefrom.

Your petitioners therefore respectfully pray the court that their motion to file said petition presented herewith be granted.

Respectfully submitted,

HARRY W. STANDIDGE,
Proctor for Petitioner.

IN THE

SUPREME COURT OF THE UNITED STATES.

IN RE PETITION OF JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF OTTO E. ANDERSON, DECEASED, JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF ELIZABETH HARKE, DECEASED, JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF ROBERT J. T. RIKER, DECEASED, JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF JOHN E. WILKINSON, DECEASED, AND ROSIE ALBERTZ, ADMINISTRATRIX OF THE ESTATE OF MARY ALBERTZ, DECEASED, FOR A WRIT OF PROHIBITION.

PETITION.

HARRY W. STANDIDGE,
PROCTOR.

BARNARD & MILLER PRINT, CHICAGO.

IN THE

Supreme Court of the United States

IN RE PETITION OF JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF OTTO E. ANDERSON, DECEASED, JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF ELIZABETH HARKE, DECEASED, JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF ROBERT J. T. RIKER, DECEASED, JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF JOHN E. WILKINSON, DECEASED, AND ROSIE ALBERTZ, ADMINISTRATRIX OF THE ESTATE OF MARY ALBERTZ, DECEASED, FOR A WRIT OF PROHIBITION.

PETITION.

To the Honorable the Judges of the Supreme Court of the United States:

Your petitioners, James F. Bishop, Administrator of the Estate of Otto F. Anderson, Deceased, James F. Bishop, Administrator of the Estate of Elibabeth Harke, Deceased, James F. Bishop, Administrator of the Estate of Robert J. T. Riker, Deceased, James F. Bishop, Administrator of the Estate of John E. Wilkinson, Deceased, and Rosie Albertz, Administratrix of the Estate of Mary Albertz, Deceased, on behalf of themselves and all other aggrieved parties, in this their petition against the Honorable George

A. Carpenter, Judge of the District Court of the United States for the Northern District of Illinois, Eastern Division, sitting in Admiralty, respectfully represent:

1. Said James F. Bishop is the duly appointed and qualified administrator of the estate of each of the following above named deceased persons: Otto E. Anderson, Elizabeth Harke, Robert J. T. Riker and John E. Wilkinson, and was appointed as said administrator of said estate of John E. Wilkinson, Deceased, on July 13th A. D. 1916, and of said Estates of Otto E. Anderson, Elizabeth Harke and Robert J. T .Riker, each deceased, on July 19th A. D. 1916, by the Probate Court of Cook County, Illinois.

2. Said Rosie Albertz is the duly appointed and qualified administratrix of the Estate of Mary Albertz, Deceased, and was appointed as said administratrix on February 2nd A. D. 1916, by said Probate Court of Cook County, Illinois.

3. Each of said above named, and more than eight hundred other, deceased persons, lost his or her life while a passenger on the steamer Eastland, by reason of the tipping over of said steamer in the Chicago River, in Chicago, Illinois, on July 24, 1915.

4. On August 17, 1915, the St. Joseph-Chicago Steamship Company, under sections 4283, 4284 and 4285 of the Revised Statutes of the United States, and the various acts amendatory thereof and supplemental thereto, filed in said District Court a limitation proceeding praying for limitation of its liability incurred as owner of said steamer, a steam vessel of more than one thousand tons burthen, by reason of the tipping over thereof as aforesaid, and

on August 19, 1915, it transferred said steamer to a trustee appointed by the court in said limitation proceeding.

5. On August 21, 1915, in said limitation proceeding, the court issued an injunction restraining the prosecution of any and all suits, actions and proceedings against said steamer or said petitioner for limitation of liability, "in respect of any claim for damages, loss, destruction or injury on account of said disaster," and on August 27, 1915, the court issued a monition which, in accordance with its terms, was returned executed by publication only, citing "all persons claiming damages for any loss, destruction or injury occasioned by the listing, turning over and sinking of the said steamer," to appear and make proof of their respective claims and answer said petition on or before the first Monday in December, 1915, "or within such further time as this court may grant," a copy of which monition is attached hereto and make a part hereof, and on December 6, 1915, and at various times thereafter, orders were duly entered by the court extending the time for filing and making proof of claims until August 5, 1916, and extending the time for excepting to or answering said petition until August 15, 1916.

6. On September 1, 1915, the Great Lakes Towing Company filed in said limitation proceeding a petition or claim alleging that on July 27, 1915, it made a contract with said St. Joseph-Chicago Steamship Company to raise said steamer for $34,500, and that it had performed said contract, and praying that the court "will pronounce in favor of its claim and will decree that it has a preferred, paramount and

first lien upon said steamer Eastland which has been surrendered and transferred to a trustee in pursuance of said limitation proceedings."

7. Said Great Lakes Towing Company never at any time had any order entered upon anyone to answer or plead to its said petition or claim, and without any such order, and when only a comparatively few claimants had appeared in said limitation proceeding, before the appointment of your petitioners, or any of them, as administrator and administratrix of the estates of said above named deceased persons, and before your petitioners, or any of them, or any of the parties whom they represent as such administrator and administratrix of said estates of said deceased persons, and before any of several hundred other claimants, had appeared, and prior to the expiration of the time described in the monition and fixed by the court for them to appear, in said proceeding, as aforesaid, and without notice to them, or any of them, said Great Lakes Towing Company, under a petition filed by it, and by order of court entered pursuant to said petition, had said steamer sold on December 20, 1915, and the proceeds of said sale paid into the registry of the court on January 3, 1916, and then immediately on said 3rd day of January, 1916, filed a written motion for an order for the payment of its said claim, on January 7, 1916, it served notice on the comparatively few claimants then in court, that on January 17, 1916, it would introduce evidence "in support of said motion," and on January 18, 1916, it introduced the only evidence introduced at any time in said proceeding in regard to its said claim, which evidence

tended to show the performance by it of its said contract on which it based its said claim.

8. On July 22, 1916, after your petitioners had been appointed as administrator and administratrix of said estates of said above named deceased persons, all of which appointments were subsequent to the time of said proceedings so taken by said Great Lakes Towing Company in said limitation proceeding, as aforesaid, your petitioners duly filed in said limitation proceeding verified claims for damages for the deaths of said above named deceased persons, on behalf of the surviving husband, widow or next of kin of each of said deceased persons, each of said claims being for ten thousand dollars, in accordance with, and as allowed by, the admiralty laws and the laws of the State of Illinois, and on July 31, 1916, they filed in said proceeding exceptions to said petition of said Great Lakes Towing Company and objections to the allowance of its said claim, and a motion to expunge from the record said evidence in regard to its said claim which, on January 18, 1916, it introduced in said proceeding without notice to your petitioners, or any of them, and before they, or any of them, had appeared in said proceeding, as aforesaid, and to deny its said claim and any and all relief asked by it in regard thereto, for the reasons that said evidence was introduced without notice to petitioners, and each of them, and without said petitioners, or any of them, being present or represented at the hearing thereof, and also for reasons set forth in said exceptions so filed by your petitioners to said petition, as aforesaid, which said exceptions, objec-

tions and motion are the only pleadings at any time filed by your petitioners, or any of them, to or in regard to said petition or claim or motion of said Great Lakes Towing Company, and copies of which are attached hereto and made a part hereof, and on August 14, 1916, petitioners filed exceptions to said limitation petition in said proceeding, all of which action was taken by your petitioners within said time described in the monition and fixed by the court for such purpose, as aforesaid, and like action was taken by several hundred other tort claimants who are in like situation with your petitioners.

9. On August 8, 1916, the court heard arguments upon said exceptions of petitioners and other claimants to said petition of said Great Lakes Towing Company, and took the matter under advisement.

10. On November 3, 1916, the court entered an order reciting that the cause came on to be heard upon said petition and claim and motion of said Great Lakes Towing Company, the answers (namely, the answers of various supply claimants and parties other than tort claimants to said petition and claim, no answer thereto having at any time been filed by any of your petitioners or any of said other tort claimants, as aforesaid), said exceptions to said petition and objections to the allowance of said claim filed by petitioners on July 31, 1916, and filed by other tort claimants on said date and prior thereto, the evidence (namely, said evidence introduced by said Great Lakes Towing Company in regard to its said claim on January 18, 1916, and which was the only evidence introduced in regard thereto, as aforesaid), and said motion to expunge said evidence

and deny said claim filed by petitioners on July 31, 1916, and filed by other tort claimants on and before said date (and no other pleadings to or in regard to said petition or claim or motion of said Great Lakes Towing Company having at any time been filed by any of your petitioners or any of said several hundred other tort claimants who are in like situation with your petitioners as aforesaid), and the court, for the reasons above set forth, having no jurisdiction to grant any of said relief prayed for by said Great Lakes Towing Company as aforesaid, found that "said Great Lakes Towing Company is not entitled to the relief prayed for by it in its said petition and motion to have its said claim decreed a preferred, paramount and first lien on said steamer or the proceeds thereof," and ordered "that said prayer of said petition and motion be and the same are hereby denied," a copy of which order is attached hereto and made a part hereof.

11. Said Great Lakes Towing Company appealed from said order of November 3, 1916, to the Circuit Court of Appeals for the Seventh Circuit, and petitioners and other claimants moved said Court of Appeals to dismiss said appeal on the ground that said order appealed from was not a final and appealable order or decree, and your petitioners also contended in said Court of Appeals that, for the reasons above set forth, the court had no jurisdiction to grant to said Great Lakes Towing Company said relief which it prayed for as aforesaid.

12. On July 23, 1918, said Court of Appeals, on the same, and only the same, record and proceedings upon which said District Court entered said order or

decree, denied said motion to dismiss said appeal, and reversed and remanded said decree of said District Court, and directed said District Court to allow said claim of said Great Lakes Towing Company, with interest and cost, on November 19, 1918, said Court of Appeals amended said decree so that as amended it provides for the allowance of interest on said claim at five per cent per annum from the time of the filing thereof, and on April 7, 1919, said Great Lakes Towing Company filed in said District Court the mandate of said Court of Appeals, directing the allowance of said claim with interest and costs, in accordance with said amended decree.

13. On December 16, 1919, on motion of life salvor claimants who had previously intervened, said District Court entered an order in accordance with said mandate of said Court of Appeals, providing that "It is ordered that the claim of the Great Lakes Towing Company for $34,500, with interest at five per cent from date of filing said claim for salving the steamer Eastland be and the same is hereby allowed, in accordance with the terms of said mandate, saving and reserving to the salvors of human life, who have heretofore filed their claims herein, the right to have their claims to a fair share thereof adjudicated."

14. On December 23, 1919, said District Court entered the decree herein complained of providing for the allowance of said claim of said Great Lakes Towing Company as a first, perferred and paramount lien, entering judgment thereon and directing the payment thereof, a copy of which said decree is attached hereto and made a part hereof, and which

is based upon said proceedings taken by said Great Lakes Towing Company in regard to its said claim before petitioners appeared, and before the expiration of the time described in the monition and fixed by the court for them to appear, in said limitation proceeding, as above set forth, and which said decree, without due process of law, deprives petitioners of their right to plead to said petition or claim and motion of Said Great Lakes Towing Company, and have proper issues made on said pleadings, before a hearing thereon, their right before such a hearing to have due notice thereof, their right at such a hearing to be present and represented and cross-examine witnesses, object to and move to strike out evidence and take such other lawful action as they might deem proper, including their right to demand that "the trial of issues of fact shall be by jury," or that there shall be a jury trial "upon the consent of the parties who shall have appeared and put any matter of fact in issue," in accordance with sections 1583 and 1585 of Volume 3 of the United States Compiled Statutes (1916 edition), pages 3140 and 3152, respectively, and their right to demand that there be no trial of any matter of fact not properly at issue, and to contest each matter of fact, including the question as to the reasonableness of the amount of the claim involved, if the preliminary questions of law should be determined against them, each and all of which rights the court had no jurisdiction to deprive them of, and therefor the court had no jurisdiction to enter said decree, and said court also, without jurisdiction, denied petitioners an appeal from said decree as hereinafter set forth.

15. Said Great Lakes Towing Company did not in its said petition or claim or motion or otherwise allege that said limitation petitioner was not entitled to the limitation of liablity which it prayed for, and that for such, or any other, reason your petitioners and said other tort claimants were not entitled to defend against its said claim and to avail themselves of their rights in the premises of which they have been deprived as aforesaid, and at no time offered or introduced any evidence tending so to show.

16. At the time of the entry of said decree on December 23, 1919, there were, and there now are, pending in said limitation proceeding, petitioners' said death claims, and several hundred other death, personal injury and supply claims, at the time of the entry of said decree, also, there was, and there now is, in the registry of said District Court, arising from the sale of said steamer, after deducting the governmental distribution fee of one per cent. the sum of $41,598.41, which sum, by agreement of all parties, has been invested in United States Victory Liberty Loan 4¼% Bonds, the question as to the alleged right of said limitation petitioner to said limitation which it prays for has not been determined, and said limitation petition stands for hearing upon said exceptions filed thereto by your petitioners and other tort claimants as aforesaid and said injunction prohibiting petitioners and said other claimants from prosecuting their said claims in other proceedings remains in full force and effect, and the court had no jurisdiction to enter the orders complained of without first determining whether

said limitation petitioner is or is not entitled to the limitation prayed for and what the respective rights of your petitioners and said other tort claimants and said Great Lakes Towing Company consequent upon such determination are.

17. Said action of the court improperly has caused and is causing your petitioners great expense, inconvenience, trouble and annoyance in seeking to prevent said unlawful action of the court in depriving them of their rights, and also in seeking to prevent the carrying out of said orders and decrees, so entered by the court without jurisdiction, as aforesaid, and will continue so to do unless this court grants to petitioners the relief herein prayed for.

18. After the entry of said order of December 23, 1919, the court entered an order reducing to $1,000 the amount of the appeal bond required by said order to be filed by said life salvor claimants and extended the time for the filing thereof, and on January 17, 1920, said life salvor claimants filed said appeal bond, and the carrying out of said order of December 23, 1919, has been and is stayed thereby.

19. On February 4, 1920, petitioners served notice on the proctors for said Great Lakes Towing Company and other interested parties, that petitioners appealed from said order and decree of December 23, 1919, and that on February 5, 1920, before said Judge Carpenter, at the opening of court, or as soon thereafter as petitioners' proctor could be heard, petitioners would, and they did, file in said District Court their petition for appeal from said order of December 23, 1919, and also said order

of December 16, 1919, and assignment of errors therefor, and prayed the court to grant said appeal, and said court then and there entered an order denying said appeal, a copy of which order is attached hereto and made a part hereof.

Petitioners, therefore, on behalf of themselves and all other aggrieved parties, respectfully pray that a writ of prohibition may issue against the said George A. Carpenter, Judge of the District Court of the United States for the Northern District of Illinois, Eastern Division, and each other judge of said court, prohibiting him and them from proceeding or allowing proceedings under said orders and decrees of December 16, 1919, and December 23, 1919, and each thereof, or from proceeding or allowing proceedings under said orders or decrees, and each thereof, insofar as the same allow said claim of said Great Lakes Towing Company for $34,500, and interest at five per cent per annum from the date of the filing thereof, or for $41,883.98, or any other sum, with costs to be taxed, as a first, preferred and paramount lien against the funds now in the registry of said District Court arising from the sale of said steamer, or otherwise, enter judgment thereon for said sum of $41,883.98, with interest until paid at five per cent. and also for costs to be taxed, and direct the Clerk of said District Court to pay the amount of said judgment to said Great Lakes Towing Company, or to its proctors of record, from said funds now in the registry of said District Court,

and that the court grant such other and further relief as to the court may seem meet.

JAMES F. BISHOP,
Administrator of each of said Estates of Otto E. Anderson, Deceased, Elizabeth Harke, Deceased, Robert J. T. Riker, Deceased, and John E. Wilkinson, Deceased.

ROSIE ALBERTZ,
Administratrix of said Estate of Mary Albertz, Deceased.

HARRY W. STANDIDGE,
Proctor for Petitioner.

STATE OF ILLINOIS, }
COUNTY OF COOK } ss.

James F. Bishop, being duly sworn, says that he is the duly appointed and qualified administrator of each of said estates of Otto E. Anderson, Deceased, Elizabeth Harke, Deceased, Robert J. T. Riker, Deceased, and John E. Wilkinson, Deceased, and as such is one of the above named petitioners; that he has read the foregoing petition and knows the contents thereof and that the same is true as he verily believes.

JAMES F. BISHOP.

Subscribed and sworn to before me
this 25th day of February A. D. 1920.

L. A. KELLY,
Notary Public in and for Cook County, Illinois.

STATE OF ILLINOIS, } ss.
COUNTY OF COOK }

Rosie Albertz, being duly sworn, says that she is the duly appointed and qualified administratrix of said estate of Mary Albertz, Deceased, and as such is one of the above named petitioners; that she has read the foregoing petition and knows the contents thereof and that the same is true as she verily believes.

ROSIE ALBERTZ.

Subscribed and sworn to before me
this 26th day of February A. D. 1920.

RAY C. LYON,
Notary Public in and for Cook County, Illinois.

IN THE DISTRICT COURT OF THE UNITED STATES,

FOR THE NORTHERN DISTRICT OF ILLINOIS,

EASTERN DIVISION.

In the matter of the Petition of St. Joseph-Chicago Steamship Company, Owner of the Steamer Eastland, for Limitation of Liability. } No. 33231.

MONITION.

The President of the United States of America, To the Marshal of the United States, For the Northern District of Illinois, Greeting:

Whereas, a petition was filed in the District Court of the United States for the Northern District of

Illinois, on the 17th day of August, 1915, by the St. Joseph-Chicago Steamship Company, as owner of the Steamer Eastland, praying for a limitation of its liability concerning the loss, damage or injury occasioned by the listing, turning over and sinking of the said Steamer on the 24th day of July, 1915, for the reasons and causes in said petition mentioned and praying that a monition of the said court in that behalf be issued and that all persons claiming damages for any loss, damage or injury by reason of the said listing, turning over and sinking of the said steamer may be thereby cited to appear before the said court and make due proof of their respective claims and all proceedings being had, that if it shall appear that the said petitioner is not liable for any such loss, damage or injury it may be so finally decreed by this court.

And whereas, the court on the 19th day of August, 1915, entered an order appointing Denis Sullivan, Trustee to receive the transfer of the said steamer from the said petitioner and the said court having ordered that a monition issued against all persons claiming damage for any loss, destruction or injury, done, occasioned or incurred by the listing, turning over and sinking of the said steamer, citing them to appear and make due proof of their respective claims.

You are therefore commanded to cite all persons claiming damages for any loss, destruction or injury occasioned by the listing, turning over and sinking of the said steamer to appear before said court and make due proof of their respective claims, before Lewis F. Mason, a U. S. Commissioner at his office

in the U. S. Post Office Building in the City of Chicago, Illinois, on or before the first Monday of December, 1915, at 10 o'clock in the forenoon, and you are also commanded to cite such claimants to appear and answer the allegations of the petition herein, on or before said last named date or within such further time as this court may grant and to have and receive such relief as they may be entitled to.

And, that you make publication of this monition in the Chicago Daily Law Bulletin, a newspaper publlished in the City of Chicago, once a week for twelve (12) weeks, and that the first publication of said monition be at least three (3) months, before the first Monday in December, 1915.

And, what you have done in the premises, do you then make and return to this court, together with this writ.

Witnesseth, the Honorable Kenesaw M. Landis and George A. Carpenter, Judges of the District Court of the U. S. for the Northern District of Illinois, this 27th day of August, 1915, and of the Independence of the United States the 140th.

T. C. MacMillan,

(Seal) *Clerk.*

By Arthur E. Claussen,

Deputy Clerk.

Enter,

K. M. L.

MOTION TO EXPUNGE EVIDENCE AND DENY CLAIM.

In the District Court of the United States,
For the Northern District of Illinois,
Eastern Division.

In re Petition of St. Joseph-Chicago Steamship Company, for Limitation of Liability. } No. 32231.

And now come James F. Bishop, Administrator of the estate of Otto E. Anderson, Deceased, James F. Bishop, Administrator of the Estate of Elizabeth Harke, Deceased, James F. Bishop, Administrator of the Estate of Robert J. T. Riker, Deceased, James F. Bishop, Administrator of the Estate of John E. Wilkinson, Deceased, Rosie Albertz, Administratrix of the Estate of Mary Albertz, Deceased (names of other claimants omitted), respondents to said above mentioned petition for limitation of liability, by Harry W. Standidge, their proctor, and said respondents, and each of them, by their proctor, move the court to expunge from the record the evidence introduced by the Great Lakes Towing Company herein, in support of its alleged claim for raising the steamer Eastland, and to deny to said Great Lakes Towing Company any and all relief prayed for by it in its petition heretofore filed by it in reference to its alleged claim herein, and to deny said claim, and to deny the motion, if any, of said Great Lakes Towing Company for the payment of its alleged claim out of the limited liability fund, if any, herein, or out of the proceeds of the sale of the steamer Eastland, or otherwise, herein, and to deny to said Great

Lakes Towing Company any and all relief asked by it in regard to its said alleged claim, or otherwise herein, for the reasons that said evidence was introduced by said Great Lakes Towing Company herein without notice to said above named respondents, and each of them, or any of them, and without said respondents, and each of them, or any of them, being present or represented at the hearing of such evidence, also for reasons set forth in exceptions filed by said respondents to said petition of said Great Lakes Towing Company herein, and because the court has no jurisdiction to grant the relief, or any part thereof, asked by said Great Lakes Towing Company, and because the granting of any such relief by the court for the above and other reasons would be contrary to the rules of court governing said proceedings and contrary to law herein.

HARRY W. STANDIDGE,
Proctor for said above named Respondents.

(Endorsed) Filed July 31, 1916, T. C. MacMillan, Clerk.

EXCEPTIONS TO PETITION AND OBJECTIONS TO ALLOWANCE OF CLAIM.

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

In re Petition of St. Joseph-Chicago Steamship Company, for Limitation of Liability.

James F. Bishop, Administrator, of the estate of Otto E. Anderson, Deceased, James F. Bishop,

Administrator of the Estate of Elizabeth Harke, Deceased, James F. Bishop, Administrator of the Estate of Robert J. T. Riker, Deceased, James F. Bishop, Administrator of the Estate of John E. Wilkinson, Deceased, Rosie Albertz, Administratrix of the Estate of Mary Albertz, Deceased (names of other claimants omitted), respondents, by Harry W. Standidge, their proctor, except to the petition of the Great Lakes Towing Company to recover $34,500 out of the proceeds of the sale of the Steamer Eastland, and out of the limited liablity fund, if any, or otherwise, herein, and object to the allowance of such claim of said Great Lakes Towing Company for said amount, or any other amount, out of the proceeds of the sale of said steamer Eastland, or out of the limited liability fund, if any, or otherwise, herein, for the following reasons, namely:

1. The court is without jurisdiction to grant the prayer of said petition of said Great Lakes Towing Company, or to allow its said alleged claim out of the proceeds of the sale of the steamer Eastland, or out of the limited liability fund, if any, or otherwise, herein.

2. The pleadings and proceeding herein are insufficient for the granting of the prayer of said petition or the allowance of said claim out of the proceeds of the sale of said steamer, or out of the limited liability fund, if any, or otherwise, herein.

3. Said Great Lakes Towing Company claims said sum of $34,500 under a contract alleged to have been made with the owner of the steamer Eastland and the underwriters insuring said steamer, and for services performed under said contract prior to the

time said owner is alleged to have transferred its interest in said steamer to a trustee, and seeks payment out of a fund not subject to the payment of such contract claim.

4. The court is without jurisdiction to allow the payment of petitioner's said claim out of funds derived from the sale of said steamer after the transfer of the interest of the owner thereof to a trustee herein.

5. The claim of said petitioner for $34,500 is for service which was not salvage service, and is excessive, unjust and unreasonable, herein.

6. The allowance of said claim at the present stage of the proceedings herein would be illegal and improper, and would or might deprive these and various respondents of various rights herein.

7. The allowance of said claim on a hearing before the court herein before the ascertainment, filing and proof of other claims which have been or may be filed herein, would be illegal and improper.

8. Said petitioner is not within, and is not entitled to prove its said claim, under the monition herein, and is not entitled to a lien as prayed for in said petition, or to the payment of its said claim out of the proceeds of the sale of said steamer or the limited liability fund, if any, or otherwise, herein, and it is also seeking to prove its said claim otherwise than in accordance with said monition, and to have said claim allowed under improper and illegal procedure.

9. Said petitioner illegally and improperly presented evidence in regard to its said claim herein,

without notice to said above named respondents and each of them, or any of them, and without said respondents and each of them, or any of them, being present or represented, at said hearing.

10. Said petitioner is seeking illegal, improper and inconsistent remedies, under illegal, improper and inconsistent procedure, herein, contrary to the rights of the above named, and of other respondents to the original petition herein, and contrary to the rules of court and contrary to law.

11. Said petition of said Great Lakes Towing Company does not deny that the St. Joseph-Chicago Steamship Company is entitled to a limitation of liability as prayed for by said St. Joseph-Chicago Steamship Company in its original petition herein.

12. The allegations of said petition of said Great Lakes Towing Company are wholly insufficient to entitle said Great Lakes Towing Company to the relief, or any part thereof, prayed for by it in its said petition, and under the allegations of said petition it is not entitled to the relief, or any part thereof, prayed for by it therein.

13. Said Great Lakes Towing Company is claiming under a contract made with the owner of said steamer in a foreign port, and neither by the petition of said Great Lakes Towing Company, nor by the evidence, is any agreement for a lien on said steamer shown herein, and if said Great Lakes Towing Company did have any lien on said steamer, such lien was cut off when said steamer was transferred to a trustee herein.

14. Under the admiralty rules of the Supreme Court, and also under the limited liability statutes,

the proceeds of the sale of said steamer cannot be distributed among any other claimant or claimants than the tort claimants cited by the monition herein.

HARRY W. STANDIDGE,
Proctor for said Respondents.

(Endorsed) Filed July 31, 1916, T. C. MacMillan, Clerk.

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

In Re Petition of St. Joseph-Chicago Steamship Company, Owner of Steamer "Eastland," for Limitation of Liability. } No. 32231.

In re Intervening Petition of Great Lakes Towing Company.

This cause coming on to be heard upon the intervening petition and claim of the Great Lakes Towing Company praying the court to decree that said Great Lakes Towing Company has a preferred and paramount maritime lien for salvage for Thirty-four thousand five hundred dollars ($34,500) against the said steamer "Eastland," and the motion of the said Great Lakes Towing Company for the payment of said amount out of the proceeds of the sale of said steamer as a preferred and paramount lien and claim against said steamer and the proceeds of said sale; and the court having heard and fully considered the said petition and claim and the motion, together with the answers and exceptions and objections filed herein to said petition and claim, and the evidence and the motion of various claimants made at and follow-

ing the close of petitioner's evidence; and having heard the arguments of counsel and being fully advised in the premises, doth find that the said Great Lakes Towing Company is not entitled to the relief prayed for by it in its said petition and motion to have its said claim decreed a preferred, paramount and first lien on said steamer or the proceeds thereof, and it is ordered that said prayer of said petition and motion be and the same are hereby denied.

And thereupon in open court the Great Lakes Towing Company, petitioner herein, gives notice of its intention to and does hereby appeal from this order and all parts thereof to the United States Circuit Court of Appeals for the Seventh Circuit.

KENESAW M. LANDIS,
Judge of said Court.

In the District Court of the United States,
For the Northern District of Illinois,
Eastern Division.

In the Matter of the Petition of St. Joseph-Chicago Steamship Company, owner of the Steamer Eastland, for Limitation of Liability.	Order No. 32231.

At a stated term of the District Court of the United States for the Northern District of Illinois, Eastern Division, held in the court rooms in the Federal Buiding in the City of Chicago, on the 23d day of December, 1919.

Present: Hon. George A. Carpenter, District Judge.

This cause coming on to be heard upon the appli-

cation of Sherwood S. Mattocks, on behalf of himself and other salvors of human life, to file amended claim, it is ordered by the court that leave be and the same is hereby given to the said petitioners to file their said amended claims and upon the application of the Great Lakes Towing Company for an order that the exceptions heretofore filed to the amended claims of the life salvors stand as exceptions to the said amended claims as amended, it is so ordered, and this cause coming on to be heard upon the said amended claims as amended and the exceptions of the Great Lakes Towing Company thereto, it is ordered by the court that the exceptions so filed to said amended claims as amended, which amount to a general demurrer and the exceptions that the services of the said life salvors and all and each of them were performed more than two years prior to the making or filing of any such claim and no sufficient excuse or reasons under the statute for said delay is given, be and the said exceptions are hereby sustained, and the other exceptions filed herein by the Great Lakes Towing Company are hereby overruled. Thereupon the said Sherwood S. Mattocks, for himself and the other life salvors, having elected to stand by their said claims as amended, it is ordered by the court that the said claims of said life salvors and each of them be and the same are hereby dismissed, to each of which said rulings and orders of the court sustaining the exceptions of the Great Lakes Towing Company and dismissing the said claims as amended, the said Sherwood S. Mattocks, on his own behalf and on behalf of other life salvors, by their proctors, duly excepted.

And now the cause coming on to be heard on the

motion and application of Great Lakes Towing Company, for a decree in accordance with the mandate of the Circuit Court of Appeals, it is now ordered, adjudged and decreed that the claim of Great Lakes Towing Company for thirty-four thousand five hundred dollars ($34,500), with interest at the rate of five per cent. per annum from September 1, 1915, amounting as of this date to forty-one thousand eight hundred eighty-three dollars and ninety-eight cents ($41,883.98), with costs to be taxed, is allowed as a first, preferred and paramount lien against the funds now in the registry of this court arising from the sale of the steamer Eastland. Judgment is accordingly rendered in favor of said Great Lakes Towing Company in said amount of forty-one thousand eight hundred eighty-three dollars and ninety-eight cents ($41,883.98), with interest until paid at five per cent., and also for costs to be taxed, and the clerk of the court is directed to pay the amount of said judgment to said Great Lakes Towing Company or to its proctors of record from said funds now in the registry of this court.

It is further ordered upon the application of the said Sherwood S. Mattocks, on his own behalf and on behalf of other life salvors, by their proctors, that payment of the amount of said judgment is hereby stayed for a period of fifteen days in order to allow an appeal from this decree. And it is ordered that on any such appeal, the bond shall be in the sum of twenty-five hundred dollars ($2,500), to be approved by this court.

And it is further ordered that in the event bond be not filed within fifteen days from the date of this

decree, the clerk shall make payments of the judgment as aforesaid.

(Enter) CARPENTER,
Judge.

23d Dec., 1919.

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

In re Petition of St. Joseph-Chicago Steamship Company to Limit Liability as Owner of the Steamer Eastland. } No. 32231.

On motion of James F. Bishop, Administrator of the Estate of Otto E. Anderson, Deceased, James F. Bishop Administrator of the Estate of Elizabeth Harke, Deceased, James F. Bishop, Administrator of the Estate of Robert J. T. Riker, Deceased, James F. Bishop, Administrator of the Estate of John E. Wilkinson, Deceased, Rosie Albertz, Administratrix of the Estate of Mary Albertz, Deceased (names of various other claimants omitted), claimants herein, by their proctor, for the allowance of an appeal in the above entitled cause from the orders and decrees entered herein on December 16th, A. D. 1919, allowing the claim of the Great Lakes Towing Company, and on December 23d, A. D. 1919, directing the payment to the Great Lakes Towing Company of its claim for $41,883.98, out of the proceeds of the sale of the steamer Eastland, to the United States Circuit Court of Appeals for the Seventh Circuit, and it appearing to the court that said claimants have filed their assignment of errors, it is ordered that said appeal be and the same is hereby denied.

(Enter) CARPENTER,
Judge of said Court.

5th Feb., 1920.

Minnesota State Library,
St. Paul.

No. ——

In the

Supreme Court of the United States

Petition of J. E. Broussard and Others for Mandamus to Obtain an Allowance of an Appeal from the Circuit Court of Appeals of the Fifth Circuit

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In the case of

WALTER J. CRAWFORD, TRUSTEE, *Appellant*,

vs.

J. E. BROUSSARD, ET AL., *Appellees*.

In the Circuit Court of Appeals, 5th Circuit.

SOL E. GORDON,
A. D. LIPSCOMB,
Attorneys for Appellees.

In the

Supreme Court of the United States

Petition of J. E. Broussard and Others for Mandamus to Obtain an Allowance of an Appeal from the Circuit Court of Appeals of the Fifth Circuit

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In the case of

WALTER J. CRAWFORD, TRUSTEE, *Appellant*, vs. J. E. BROUSSARD, ET AL., *Appellees*.	*In the Circuit Court of Appeals, 5th Circuit.*

No. ——

To the Honorable Justices of the Supreme Court of the United States:

The petition of Beaumont Rice Mills, a corporation, having its principal office, domicile and place of business in the State of Texas and County of

Jefferson, and of J. E. Broussard, J. M. Hebert, B. C. Hebert, J. A. Bordages, Sarah Hamshire, Marian Hamshire, Lelemarie Hamshire, M. S. Hamshire, Asa Hamshire, Marie Hamshire, Eunice Arceneaux, R. H. Hancock, Lena Broussard, J. Perry Broussard, and Paul Blevens and Rose Mary Blevens, minors, by their next friend, J. E. Broussard, residents and citizens of the said State and County, respectfully showeth:

I.

(1) That plaintiffs, all suing on behalf of Beaumont Rice Mills, brought their bill in equity in the District Court of the United States for the Eastern District of Texas at Beaumont on the 3d day of July, 1917, against Walter J. Crawford, trustee in Bankruptcy of Moore & Bridgman, Bankrupts, and against E. J. LeBlanc, his predecessor as trustee, to recover the sum of $11,651.25 and interest accumulated thereon, proceeds of the sale of a crop of rice known as the McCrimmin crop; same was a separate suit, separately styled and numbered in the nature of a plenary suit to try title; praying subpoena, and was not an intervention in bankruptcy proceedings. It was brought in conformity to directions of an opinion and decree of this court rendered at the October Term, 1912, in cause No. 83, styled *Hebert et al.* v. *Crawford*, reported in 228 U. S. 208. The delay in filing the suit was due, as pointed out in the petition, to the pendency of State Court proceedings just determined at the time the suit was filed in 1917.

(2) Plaintiffs alleged in their said bill and amendments thereto that said crop was the property of Beaumont Rice Mills acquired by it while operating as a partnership and under contracts made by the bankrupts with Beaumont Rice Mills whereby the Beaumont Rice Mills furnished the land, seed, water, and supplies required for production of said crop before the crop had any existence and with the understanding that said crop should stand as security for an existing indebtedness of $6,117 from the bankrupts as well as for said advancements, and that afterward, and before bankruptcy or contemplation of bankruptcy, and while the crop was a growing crop and had been watered once the petitioners agreed to take same over in satisfaction of their indebtedness, on condition that same be harvested and delivered to them by the bankrupts That same had been delivered to plaintiffs, at a total cost to plaintiffs of their previous indebtedness of $6,-117.03 and advances for rent, seed and other supplies and harvesting and shipping expenses in the amount of $5,209.45, making the total cost to plaintiffs, $11,326.48 besides interest, and plaintiffs had afterward sold same for $11,651.25, which sum, with interest thereon aggregating $13,131.50 had been taken from the plaintiffs and placed in the hands of defendant by one E. J. LeBlanc, a partner with the other plaintiffs in what was then the firm of Beaumont Rice Mills, since incorporated, and who had been a trustee of the same estate in bankruptcy, preceding Crawford.

(3) That the said E. J. LeBlanc, in taking said sum, had acted under the compulsion of an order of the former District Judge, Hon. David Bryant, made in a proceeding to which these petitioners were not parties and in its nature not a plenary trial, but that defendant Crawford was seeking to give conclusive effect thereto, and claiming title by virtue of said orders to the exclusion of any right in petitioners even to a hearing on their claim.

(4) The only grounds of Federal jurisdiction alleged in said bill or amendments were the facts of custody of the fund as herein stated and the following passage in said bill, to-wit:

> "The plaintiffs are citizens of the State of Texas and of the United States, residing in Jefferson County, and that defendants, Walter J. Crawford and E. J. LeBlanc, reside in the said State and County, and are herein sued in their character as Trustees in Bankruptcy and as an officer and former officer of this court, and the issues herein presented involve the construction and application of the Constitution and laws of the United States and application of a judgment of the Supreme Court of the United States (*Hebert* v. *Crawford*, 228 U. S. 208), relating to the same subject matter and parties herein involved."

(5) Nowhere in said bill was it alleged that defendants claimed said fund under any provision of the bankruptcy law, but it was alleged that defendant Crawford sought to hold same through giving conclusive effect to merely *ex parte* pro-

ceedings against LeBlanc, which, if given conclusive effect by the bankruptcy court as against these petitioners, would amount to a deprivation of property without due process of law.

(6) Nowhere in said bill did the plaintiffs assert any claim based upon the bankruptcy law.

(7) Nowhere in the pleadings of the defendants was any claim made that the sale or contracts under which plaintiffs claimed were violative of the bankruptcy law, or made in fraud of creditors or intended as preferences, but on the other hand, the defendant in his pleadings, declining to make any plea of confession and avoidance, stood upon his denial of any agreements ever having been made with the bankrupts, and upon pleas of *res adjudicata* and pleas of statutes of limitation.

(8) The prayer of plaintiffs' bill as amended was for a decree restoring them the proceeds of the crop, or in the alternative, for a decree charging it with the valid liens of the plaintiffs amounting to $11,326.48, and interest.

II.

The evidence conformed to the plaintiffs' pleading in every respect except that it showed the original $6,117.03 indebtedness to petitioners was entitled to a credit of $750. It showed said indebtedness bore five and one-half months' interest at the rate of eight per cent per annum; that the sale at $11,651.25, after the crop was harvested, sacked, hauled to warehouse and held for a favorable market was a good one and that the crop

had yielded better than was expected; that petitioners had their investment tied up in the crop from the middle of June till their sale of it in the following year; and these were the facts educed to show the value which the crop had as a growing crop when petitioners agreed to purchase it in June, at which time it was up and had received water once.

III.

The judgment of the trial court, after hearing all the evidence in open court, was that the contracts and sale were in fact made as alleged, and that plaintiffs were entitled to the proceeds of sale of the crop, and it was so ordered, District Judge Gordon Russell filing a full statement of the law and facts upon which his decision was based, conforming to the statements above made.

IV.

The trustee, Crawford, appealed from said judgment to the Circuit Court of Appeals of the Fifth Circuit of the United States at New Orleans, and the same was there reversed by a majority decision, which annulled the judgment and directed dismissal of the suit, in conflict, we believe, with the directions of this court, above referred to, holding that plaintiffs were entitled to a hearing on their claim both of title and as to their liens. The majority opinion signed by Circuit Judge Walker held the alleged sale to be void as to creditors; admitted the validity of plaintiffs' liens, but held that such liens of plaintiffs were destroyed as merged in the transfer which

they said was valid between the parties to it, though void as to creditors. The opinion was concurred in by District Judge Sheppard while Circuit Judge Batts filed a dissenting opinion, affirming in effect the findings and conclusions of District Judge Gordon Russell and declaring in respect of the majority judgment that he "could not concur in a judgment bringing about such palpably unjust results." The opinion of the majority was that petitioners were constructively charged with fraud of creditors because, as shown in their opinion on petition for rehearing, they considered that the crop in question, as a growing crop, bought at a time when they knew of their vendors' insolvency, had only cost plaintiffs $10,356.21 including the cost of harvesting, whereas it appeared they were able to sell it as a matured crop some six months later, for $11,651.25. These petitioners will be able to show by uncontradicted evidence in the record that the majority's finding of such discrepancy between sale price and purchase price was not correct, and that no one had bankruptcy or insolvency in contemplation at the time, and that there was no pleading raising such an issue.

V.

Petitioners show that by leave of the Circuit Court of Appeals they filed their petition for rehearing, which was overruled by Circuit Judge Walker and District Judge Sheppard by order entered on October 7, 1919, Circuit Judge Batts having resigned in the meantime.

VI.

That thereupon petitioners within three months presented to Circuit Judge Walker their petition for allowance of appeal, assigning errors that were assigned in the petition for rehearing including the violation of constitutional rights of petitioners by decreeing a cancellation and annulment of sale to petitioners in behalf of creditors without pleadings to warrant such decree, and other errors assigned raising constitutional questions. That the assignment of other errors, accompanying the petition for appeal, are set forth in full as exhibits hereto.

VII.

That thereupon the Honorable Richard W. Walker, Circuit Judge, the only circuit judge now on the bench in the Fifth Circuit, denied the petition for appeal.

VIII.

Petitioners show the court that the jurisdiction of the United States District Court was not invoked in said cause on the ground of diversity of citizenship or alienage, nor was it a case arising under any law mentioned in Section 128 of the Judicial Code, or in the amendments of 1915 and 1916 relating to the final jurisdiction of the Circuit Court of Appeals; nor was it "a proceeding, or cause arising under the bankruptcy laws," nor "a controversy arising in such proceedings," but it was a separate and independent suit on a cause of action arising under the Texas laws and which, under the provisions of Section 23a of the Bankruptcy Act, the petitioners had a right to bring

in any state court but for the fact that the United States District Court, having a concurrent jurisdiction with such courts to try title, excluded such other concurrent jurisdictions *only by reason of its custody* of the fund. * * * And the petitioners respectfully submit that the mere fact of such custody cannot operate to the exclusion of any remedy which the petitioners could properly have in that court or in this court as having power of review over it. And these petitioners also have their clear right of appeal to this court because of the violations of the constitution originating in the Circuit Court of Appeals, which are set out in the accompanying assignment of errors, and consist in this, namely:

(1) The purport and effect of the judgment of the Circuit Court of Appeals is to annul on behalf of creditors a sale to petitioners concededly valid as between the parties, and this without any pleading in confession and avoidance, in conflict with the directions for a fair trial given by this court in respect of this matter, in *Hebert* v. *Crawford*, 228 U. S. 208, and in conflict with the decesion of this court in the case of *Lutcher & Moore Lumber Co.* v. *Knight*, 217 U. S. 267.

(2) The purport and effect of the judgment of the Circuit Court of Appeals is to effectuate a forfeiture of valid liens, concededly good against all persons, the majority ruling being that such liens are destroyed by taking the transfer of the property, which transfer it annuls.

IX.

Petitioners have no other remedy that is adequate, for in no other way than by mandamus can they have the review as matter of right that is given them by the constitution and laws of the United States in such cases.

X.

Petitioners attach hereto as Exhibits A, B, C, and D, respectively, their Petition for Appeal, Assignment of Errors, Additional Assignment of Errors, and letter of the Honorable Circuit Judge Walker, denying the petition for appeal, and make reference to the transcript on appeal in the Circuit Court of Appeals in the said cause Number 3325, Walter J. Crawford, Appellant, *versus* J. E. Broussard, *et al.*, Appellees.

The petitioners, in the abundance of caution are prosecuting simultaneously an application for writ of certiorai, to which application and the record accompanying same, reference is here made for the purpose of enabling the court to verify these statements, if it sees fit to do so.

Your petitioners humbly pray that Your Honors would be pleased to order that a writ of mandamus, in due form, be at once issued from this court, returnable to the third Monday in December, 1919, commanding and requiring the Honorable Richard W. Walker, circuit judge, presiding in the Fifth Circuit of the United States, at New Orleans, to allow the appeal as prayed for in the said petition for appeal, or on failure to allow

said appeal to show cause on said return date why he should not have allowed it.

SOL E. GORDON,
A. D. LIPSCOMB,
Attorneys for Petitioners Above Named.

Beaumont, Texas, November 20, 1919.

The State of Texas, County of Jefferson—ss.

Before the undersigned notary public, this day appeared A. D. Lipscomb, who being duly sworn, on oath says the facts set forth in the foregoing petition are within his knowledge truly and correctly stated.

A. D. Lipscomb

Sworn to and subscribed before me, this 20th day of November, 1919.

.....

Notary Public in and for Jefferson County, Texas.

EXHIBIT "A."

Number 3325.
In the Circuit Court of Appeals of the United States, at New Orleans.
Fifth Circuit.
WALTER J. CRAWFORD, Trustee, *Appellant*,
vs.
J. E. BROUSSARD ET AL., *Appellees*.

Petition for Appeal.

To the Honorable Judges of Said Court:

The above mentioned appellees, viz., J. E. Broussard, Beaumont Rice Mills, J. M. Hebert, B. C. Hebert, J. A. Bordages, Sarah Hamshire, Marian Hamshire, Lelemarie Hamshire, M. S. Hamshire, Asa Hamshire, Marie Hamshire, Eunice Arceneaux, Irene Hancock, R. H. Hancock, Paul Blevins and Rose Mary Blevins, minors, herein acting by and through their next friend, J. E. Broussard, and Lena Broussard and J. Perry Broussard, feeling themselves aggrieved by the decree rendered in this cause by the majority of this Circuit Court of Appeals and by the order denying their petition for rehearing entered in the above entitled cause on the 7th day of October, 1919, do hereby appeal from said decree and order to the Supreme Court of the United States for the reasons set forth in the Assignment of Errors filed herewith.

And these petitioners pray that their appeal be allowed and that citation be issued as provided

by law, and that a transcript of the record, proceedings and documents upon which said decree and order were based, duly authenticated, be sent to the Supreme Court of the United States, sitting at Washington, D. C., under the rules of such Court in such cases made and provided.

And your petitioners further pray that the proper order relating to the security to be required of them be made.

Respectfully,

SOL E. GORDON,
A. D. LIPSCOMB,
Attys. for Appellees.

EXHIBIT "B."

Number 3325.
In the United States Circuit Court of Appeals
at New Orleans.
Fifth Circuit.
WALTER J. CRAWFORD, Trustee, *Appellant*,
vs.
J. E. BROUSSARD ET AL., *Appellees*.

Assignment of Errors.

Now come the appellees in the above entitled cause and file the following Assignment of Errors upon which they will rely in the prosecution of their appeal in this cause from the decree herein made by this Honorable Court and the order overruling and denying their Petition for Rehearing, made in accordance with supplemental opinion filed October 7th, 1919.

I.

The majority decision of the Circuit Court of Appeals is erroneous in reversing the trial court's finding of a valid transfer from the bankrupts to Beaumont Rice Mills, for it is clear from the uncontradicted evidence and findings of the trial judge that the transfer was made when no one contemplated bankruptcy or insolvency and while the crop transferred was merely a growing crop, and that the transfer was made at a price which was then fair and plainly adequate price for it.

II.

The majority decision of the Circuit Court of Appeals is erroneous in holding that admittedly valid liens of Beaumont Rice Mills to an amount about equal to the value of the crop in question were lost by the transfer of the crop which was made by the bankrupts to the Beaumont Rice Mills, the true rule being that where a creditor takes a transfer of his debtor's property in satisfaction of debts any invalidity in the transfer affects only the debtor's equity of redemption and does not penalize the creditor by forfeiture of the rights vested in him by virtue of his pre-existing liens.

III.

The majority decision of the Circuit Court of Appeals errs in treating the subsequent voluntary bankruptcy of the debtors as an evidence of intent to delay, hinder or defraud creditors in making transfer of the McCrimmin crop to Beaumont Rice Mills, because the uncontradicted evidence shows that the subsequent bankruptcy was forced upon the debtors by a wrecking process of the creditors that was wholly unexpected and that at the time of the transfer the debtors had no such thing as bankruptcy in contemplation but had every reason to believe their remaining crops, when matured, and other assets would be greater in value than their debts, and that their diligent efforts to increase their assets would induce all reasonable creditors to forbear forced collection until their crops should be matured and saved.

IV.

The majority decision of the Circuit Court of Appeals is erroneous in holding that the transfer of the McCrimmin crop to Beaumont Rice Mills was void as to creditors because it does not appear either from the pleadings or evidence that, at the time of the transfer, the remaining assets of the debtors were insufficient to satisfy all creditors.

V.

The majority of the Circuit Court of Appeals err in holding that while a valid transfer binding on appellees was made in June, 1906, yet same was void as to creditors, because such finding is not justified by any assignment of error in appellants' brief—the first (page 55) *urging that there was never any sale* to Beaumont Rice Mills by Moore & Bridgman, but that the crop remained the property of Moore & Bridgman at the time of the bankruptcy; the second (page 83) urging that the sale was void as a preference, and the others urging limitations, *res adjudicata* and questions of procedure; while the facts show an actual sale in June, wherein the consideration was release of a debt secured by lien on the crop and other property and amounting to a sum *which certainly does not appear to have any less than the value the crop then had.*

VI.

The majority of the Circuit Court of Appeals err in holding that either the facts of this case or pleadings authorize a conclusion that the contracts of Moore & Bridgman with appellees were in-

tended in fraud of creditors, since pleadings and undisputed evidence show that *every act done by the debtors up to the time of bankruptcy was clearly intended for the benefit of their estate.*

VII.

The majority of the Circuit Court of Appeals err in holding that the transfer of the McCrimmin crop to Beaumont Rice Mills was void as being made to hinder, delay or defraud creditors, because the whole course of conduct of all the parties affirmatively appears in pleadings and evidence to have been such, up to the time the debtors were driven into bankruptcy, *as to reasonably indicate to appellees a purpose to improve the debtors' estate by every act done, including the sale.*

VIII.

The majority opinion of the Circuit Court of Appeals erroneously states the pleadings of Beaumont Rice Mills in numerous particulars pointed out in subdivision VI of their petition for rehearing, with convenient references to the record.

IX.

The majority opinion of the Circuit Court of Appeals erroneously recites the evidence as pointed out in subdivision VII of the Beaumont Rice Mills' petition for rehearing, with convenient references to the record.

X.

The majority of the Circuit Court of Appeals have committed the error of indulging presumptions against the justice and verity of the Trial

Court's findings and conclusions, while the opposite practice is the correct one.

XI.

The majority opinion of the Circuit Court of Appeals is erroneous in assuming that any pleading of "*bona fides* and fair value" was necessary on the plaintiffs' part in the absence of a pleading on defendants' part of "sale in fraud of creditors," the defendants standing solely on allegations that there was *no sale at all.*

XII.

The majority of the Circuit Court of Appeals have erred in their opinion and decision in this cause, in this, that it is at variance with the pleadings of the trustee in bankruptcy whose case, as pleaded, is merely a denial of the transfer asserted by appellees, and pleas of *res adjudicata* and limitation, whereas the majority opinion admits the transfer and does not uphold such pleas in bar.

XIII.

If the opinion or decision of the majority of the Circuit Court of Appeals can be construed as sustaining any plea of limitations the same is erroneous because by the laws of the United States, governing suits against Trustees in Bankruptcy involving title to property, prosecuted by persons claiming adversely to the estate no statute of limitations begins to operate until after the discharge of the trustee in bankruptcy, and all claims asserted by the plaintiffs were adverse to the estate and not claims sought to be proved in bankruptcy.

XIV.

The majority opinion of the Circuit Court of Appeals shows that said majority has considered this case from the standpoint of a tribunal for administration of bankrupt estates rather than from the standpoint of a court of legal justice, and its action is therefore in violation of the Fifth Amendment of the Constitution of the United States and contrary to the spirit and purpose of Section 23a of the Bankruptcy act, denying the right to such control over the remedial rights of strangers to the bankruptcy proceeding. And this cause of complaint with the decision besides being manifest in the general spirit of the majority opinion, is especially manifest in the following particulars, viz:—

(a) There were no pleadings authorizing the decision herein rendered by the Circuit Court of Appeals annulling a transfer conceded in the opinion to have been made.

(b) The decision of the Circuit Court of Appeals attempts to enforce against plaintiffs a penalty that is not authorized by any law, such penalty consisting in the forfeiture of lien rights conceded by the opinion to exist and concerning the validity of which no reasonable question could arise under the Bankruptcy Law.

Respectfully,

SOL E. GORDON,

A. D. LIPSCOMB,

Attorneys for Appellees.

A. D. LIPSCOMB,
Beaumont, Texas.

EXHIBIT "C."

Number 3325

In the United States Circuit Court of Appeals at New Orleans.

Fifth Circuit.

J. E. BROUSSARD ET AL., *Appellees.*

vs.

WALTER J. CRAWFORD, Trustee, *Appellant,*

Additional Assignment of Errors.

Now comes the appellees in the above styled cause and file the following additional Assignment of Errors in connection with their petition for appeal, to-wit:

XV.

The Circuit Court of Appeals errs in its ruling on the petition for rehearing in assuming that plaintiffs' bills as amended showed insolvency of the debtors at the time of the transfer.

XVI.

The Circuit Court of Appeals errs in its opinion on petition for rehearing in declaring that the evidence shows insolvency of the debtors at the time of their agreement for transfer to Beaumont Rice Mills.

XVII.

The Circuit Court of Appeals errs in its ruling on motion for rehearing in asserting that it was not alleged or proved that what the creditor parted with was approximately equivalent to what it acquired.

XVIII.

In its tabulation and comparison of cost and value as embraced in its opinion on petition for rehearing the Circuit Court of Appeals understates the cost to appellees of the crop in the following particulars, to-wit:

(1) The two mortgages to appellees provided for eight per cent interest instead of six as stated. (Tr. pp. 83 and 85.)

(2) The amount of advances, expense of harvesting and rent are understated by the Circuit Court of Appeals in the amount of $422.46, as shown by comparison with the findings of the trial court. (Tr. p. 73.)

(3) The Circuit Court of Appeals should have allowed some interest on said advances. And said opinion overstates the value of the crop in this that whereas the crop only brought $11,651.25, six or more months after Appellees agreed to purchase it, and its value at the time it was purchased in June can be ascertained from the sale price only by discounting the sale price correspondingly, yet the Circuit Court of Appeals takes such sale price as the criterion of value as a growing crop without deduction. Moreover its value in June must be further discounted under the undisputed evidence showing that it yielded better and brought a better price than was expected.

XIX.

The Circuit Court of Appeals has erred in dealing with this case as a proceeding in bankruptcy and applying to it those presumptions favorable to the trustee's claims and favorable to prompt

and expeditious administration, whereas the plaintiffs, prosecuting a separate suit, asserting a claim alike adverse to the bankrupts and the trustee, were entitled to a fair opportunity for a hearing unprejudiced by presumptions against them

Respectfully,

SOL E. GORDON,

A. D. LIPSCOMB,

Attorneys for Appellees.

A. D. LIPSCOMB, Beaumont, Texas.

EXHIBIT "D."

UNITED STATES CIRCUIT COURT OF APPEALS,
FIFTH CIRCUIT

Richard W. Walker,
U. S. Circuit Judge.
Fort Worth, Texas, Nov. 6th, 1919.

A. D. Lipscomb, Esq.,
Perlstein Bldg.,
Beaumont, Texas.

Dear Sir:

I have your letter of the 3d inst., enclosing the papers mentioned in the case of *Crawford*, Trustee, *versus Broussard*, No. 3325.

My examination of the question raised by your application for the allowance of an appeal has resulted in the conclusion that the case is not one which the existing law permits to be appealed to the Supreme Court from the Circuit Court of Appeals. It follows that I must decline to allow the appeal prayed for. I return herewith the appeal papers you sent me.

Very truly yours,

RWW/AFH. R. W. WALKER.
Enc.

St. Paul, Minn. State Library,

No. ——

In the

Supreme Court of the United States

BRIEF AND ARGUMENT ON THE PETITION OF BROUSSARD AND OTHERS FOR MANDAMUS

In the Case of

WALTER J. CRAWFORD, *Appellant*,

vs.

J. Z. BROUSSARD ET AL, *Appellees*.

In the Circuit Court of Appeals, Fifth Circuit

SOL E. GORDON,
A. D. LITSCOMB.

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In the

Supreme Court of the United States

BRIEF AND ARGUMENT ON THE PETITION OF BROUSSARD AND OTHERS FOR MANDAMUS

In the Case of

WALTER J. CRAWFORD, *Appellant*,

vs.

J. E. BROUSSARD ET AL., *Appellees*.

} *In the Circuit Court of Appeals, Fifth Circuit.*

No. ——.

BRIEF OF THE ARGUMENT.

(1) This, being a "suit in equity," as distinguished from an intervention in bankruptcy proceedings, and being brought by strangers to

the bankruptcy proceedings as a separate suit with prayer for subpoena and not founded on nor defended under any provision of the bankruptcy law, cannot be classed either as a "proceeding or cause arising under the bankruptcy act" or as "a controversy arising in such proceedings or cause," but must be governed by the rules applicable to "controversies *at law or in equity*, as *distinguished* from *proceedings in bankruptcy*," which Section 23a of the Bankruptcy Act (except in three special kinds of cases), excludes from the jurisdiction of the District Court as a court of bankruptcy and refers to the jurisdiction of the District Court under the general law, when it has jurisdiction at all.

(2) The U. S. District Court does not take jurisdiction of this case exclusive of the state courts, simply because it is a court of bankruptcy having custody (*Murphy* v. *Jno. Hoffman Co.*, *infra*), nor because it is a Federal court having custody (Wabash College Case), but because of the general rule of law as to the jurisdiction of courts, to the effect that, as between two courts of *competent concurrent* jurisdiction over the subject matter, the one having custody of the property will exclude the other in any controversy as to title to that property.

(3) The rule is one relating to courts of *competent concurrent jurisdiction* over the subject matter and does not exclude the jurisdiction of a court of competent jurisdiction to try title when the property is in the hands of a court having no such jurisdiction (*Byers* v. *McAuley*, *infra*), and it follows that it cannot apply so as to empower any court to extend its jurisdiction, or the finality

of its jurisdiction, to new subject matter by merely taking custody.

(4) While this case is such that it might have been made a "controversy arising in bankruptcy proceedings," by intervention therein such as necessarily to delay settlement of the estate, yet it follows from Ss. 11d and 23a of the Bankruptcy Act that the plaintiffs had the right to institute it as a separate suit, such as not necessarily to delay the final settlement, and they did so institute it

(5) While the trustee could, at any time after the adverse claim became known to him, have instituted proceedings under the Bankruptcy Act (Sections 60b, 67e or 70e), to recover this property, thus delaying the administration with the claim and subjecting it to the more or less summary and limited methods of procedure and appeal applicable to the bankruptcy court, yet he would have been compelled in such case to admit the validity of the sale as between the parties by pleading in confession and avoidance; and he has never been willing to make such a plea, not even when sued by these plaintiffs, but has stood upon his denial of any contract of transfer having been made.

(6) To treat this as a suit in equity, separate from the bankruptcy proceedings, is conformable to the general rules of law as to jurisdiction; harmonizes with the spirit of S. 23a of the Bankruptcy Act; harmonizes with the constitution which protects strangers against summary divestiture of title to property through ministerial agencies of the government; harmonizes with S. 11d of the

Bankruptcy Act, which contemplates suits against trustees separate from the bankruptcy proceedings, and gives all the force and operation that can reasonably be demanded to the common law rule under which the U. S. District Court takes exclusive jurisdiction in this case.

(7) This being a suit in equity, separate and distinct from the bankruptcy proceedings, and not necessarily impeding them, the appellate jurisdiction is not controlled by the amendments of 1915 and 1916 but is controlled by Sections 241 and 128 of the Judiciary Act which clearly gives this court appellate jurisdiction, since it neither depends upon diversity of citizenship nor other exception named in S. 128, but is brought in the U. S. District Court because of the fact of custody and because the constitution and laws of the United States and the directions of a decree of this court are involved. (*Florida Etc. R. R. Co.* v. *Bell*, 176 U. S. 325.)

(8) Even if the Circuit Court of Appeals jurisdiction were otherwise final, the fact that said court originated questions which were not raised in the trial court by the pleadings, nor considered by the trial court, and whereon its rulings, as stated in the majority opinion, operate a divestiture of plaintiff's title without due process of law, gives this court appellate jurisdiction as was exercised in the case of *Lutcher & Moore Lumber Company* v. *Knight*, 217 U. S. 267, to review a decision of the Circuit Court of Appeals in a case in which its decision was otherwise final.

Jurisdictional Facts.

The jurisdictional facts are sufficiently stated in the petition for mandamus. This court will take judicial cognizance of the proceedings had in this court in the case of *Hebert* v. *Crawford*, which was No. 83 at the October term, 1912, between the same parties and affecting the same property, reported in Vol. 228, U. S. Sup. Ct. Reports, p. 208.

I.

This is a separate suit in equity as distinguished from an intervention in bankruptcy proceedings.

The bankruptcy law recognizes three sorts of proceedings with which the officers of bankruptcy courts may be concerned, viz.:

(1) Proceedings and causes arising under the Bankruptcy Act, S. 25b 1 and 2 of the Bankruptcy Act; Acts of 1915 and 1916 relating to the final jurisdiction of the C. C. A., 39 Stat. L. 727; 38 Stat. L. 803.

(2) Controversies arising in bankruptcy proceedings and causes. S. 24a of the Bankruptcy Act. Acts of 1915 and 1916, 38 St. L. 803; 39 St. L. 727.

(3) "Controversies at law and in equity, *as distinguished from proceedings in bankruptcy*, between trustees and adverse claimants." S. 23a Bankruptcy Act.

The last named kind are triable in state courts and in Federal courts of concurrent jurisdiction; and Federal courts cannot take jurisdiction of

them except where they could if the controversy was between the bankrupt and the adverse claimant, unless by consent of the adverse claimant, or unless the suit was by the trustee under S. 60b, 67e or 70e, S. 23a and b of the Bankruptcy Act.

The amendments of 1915 and 1916 clearly cut out the appellate jurisdiction of the Supreme Court in respect of the first two classes. Acts of Sept. 6, 1916, 39 Stat. L. 727; and S. 6 of the Act of January 28, 1915, 38 Stat. L. 803.

We apprehend that if it had been the intention to cut off the jurisdiction of the Supreme Court as to the third class—suits at law and in equity—the intention would have been made clear. Sutherland on Stat. Construction S. 396; 36 Cyc. 1188.

But it could not have been intended to cut out the jurisdiction as to the third class because that includes controversies of all the ordinary kinds over which the bankruptcy court has no jurisdiction as such unless obtained by obtaining custody. That would have been to invade by implication the ordinary field of this court's jurisdiction, whereas the purpose was merely to cut off those controversies which arise out of the existence of a bankruptcy law. There was evidently no purpose to repeal S. 23a by implication.

The present case is not based upon any provision of the bankruptcy law and it is not an intervention in the bankruptcy proceedings, such as necessarily to delay them, but it is a separate suit, such as under the provisions of the bankruptcy law could have been brought in the U. S. District

Court at any time within two years *after the close of the bankruptcy*. S. 11d Bankruptcy Act.

If it had been such a case as the Circuit Court of Appeals holds it to be it was the duty of the trustee to proceed under Section 67 of the bankruptcy law, pleading in confession and avoidance, and promptly settle the matter. *Staats* v. *Sec. Trust Co.*, 243 U. S. 122.

The U. S. District Court had jurisdiction in this case not by reason of the bankruptcy law, but by reason of the fact that it was a court of competent jurisdiction concurrent with the state courts and had custody.

Murphy v. *Jno. Hofmann Co.*, 211 U. S. 568-9.
Hebert v. *Crawford*, 228 U. S. 208.

The fact of the U. S. District Court's jurisdiction by reason of custody should not therefore result in forcing such a construction on the suit instituted by the petitioners as to require that it be considered a "controversy arising in bankruptcy proceedings," so as to cut off their right of appeal by bringing them under the amendments of 1915 and 1916. *First N. Bank* v. *Chicago Title & Trust Co.*, 198 U. S. ~~1055~~ 241

One was participating in a "proceeding or cause" arising under the bankruptcy law when he appeared "in the bankruptcy court, recognizing the *title* and right of possession of the trustee in bankruptcy and asserted his claim" (*Coder* v. *Arts*, 213 U. S. 235), and, under the law as it stood prior to 1915, such a cause or proceeding could

be taken to the Supreme Court on appeal under Section 25 b-1, *Coder* v. *Arts*, 213 U. S. 238.

One had "a controversy arising in bankruptcy proceedings" when he "intervened in the bankruptcy proceedings for the purpose of asserting an independent and superior title to the property held by the trustee" (*Coder* v. *Arts*, 213 U. S. 235, or where the trustee sued under S. 67e or 67b. *Staats* v. *Sec. Trust & Savings Bank*, 243 U. S. 122), and such a case, prior to the amendments of 1915 and 1916 was appealable to the Supreme Court under the provisions of Section 24 of the Bankruptcy Act, taken in connection with provision of Sections 241 and 128 of the judicial code. *Hewit* v. *Berlin Machine Works*, 194 U. S. 296.

Under Section 23a, it is clear that suits or controversies "at law and in equity" (except those which are instituted in the bankruptcy proceedings with the consent of the adverse claimant, as by his voluntary intervention, or by the trustee under Sections 60b, 67e or 70e), may be brought by or against trustees in bankruptcy either in the state courts or bankruptcy court, but in the latter court only when it could have been brought there if brought by or against the bankrupt himself, and that such a case would still be governed by Sections 241 and 128 and is not within the Acts of 1915 and 1916.

The District Court of the United States has a jurisdiction of this case, concurrent with the state courts ~~or bankruptcy court, but in the lat-~~ under sections 23 chapter 14 petition, because it involves the construction and application of the Constitution of the United

States, etc. (*Buffet* v. *Clark-Montana Co.*, U. S. Sup. Ct. Adv. Ops., 1919, p. 297), and it has exclusive jurisdiction because, being under the general law a court of competent jurisdiction, it also has custody of the property. *Wabash R. R.* v. *Adelbert College*, 208 U. S. 54.

To refer the exclusive jurisdiction of the Federal District Court in this case to its general concurrent jurisdiction and custody, rather than to its jurisdiction strictly as a bankruptcy court, is to preserve to the adverse claimant, as contemplated by Section 23a, all the remedial rights and choice of procedure that is not cut off by the fact of custody. *Bardes* v. *Bank*, 178 U. S. 535-6.

If the law has not forced them in as participants in the bankruptcy proceedings, clearly the plaintiffs have not consented to go in to them. They filed a separate suit, separately numbered and subpoena being prayed for.

That such separate suits can be filed in the District Courts is recognized by the authorities (Loveland, Ss. 534 and 411), and implied in the provisions of Sections 23a and 11d, the latter recognizing the right to sue the trustee at any time within two years after closing the estate.

The trustee could, at any time, have begun a suit against plaintiffs under Sections 60b, 67e and 70e, and in that case he would have had a cause arising under the bankruptcy law, but he would have had to admit the validity of the transactions as between the parties (*Staatts* v. *Sec. Trust Co.*, 243 U. S. 122), but his defense adhered to throughout, is that no such transactions were

had at all. See his pleadings quoted in full above in this respect.

The allegations in plaintiff's petition control as to the jurisdiction of the trial court and also as to the jurisdiction of the appellate court. *Flanders* v. *Coleman*, U. S. Sup. Ct. Adv. Ops., June 2, 1919, p. 596; *Butler* v. *Clark-Montana Co.*, Id. p. 297. But if the pleadings of defendant Crawford could oust appellate jurisdiction, he has not pleaded anything to have that effect. He has made no plea of confession and avoidance, nor made any reference to Sections 60b, 67e or 70e, nor did plaintiffs allege that the trustee claimed under either of those sections, but they alleged their claims as resting upon contracts with the debtors originating in a manner most favored in equity, and much more than four months prior to bankruptcy, and showed that the trustee denied that such contracts were ever made and that he insisted on holding the property absolutely under proceedings in which plaintiffs had not been parties.

The principles of intervention are instructively discussed in the case of *Gratiot County State Bank* v. *Johnson*, U. S. Sup. Ct. Adv. Ops., March 17, 1919, p. 317, though not the same kind of case as this. Dealing with the right to intervene given by certain sections of the Bankruptcy Act, the court says:

> "The sections are permissive, not mandatory. They give to a creditor * * * the right to contest * * * But he is under no obligations to intervene. * * * Unless he

exercises the right to become a party, he remains a stranger to the litigation. * * * The rule is universal that persons who might have made themselves parties to a litigation between strangers, but did not, are not bound. * * * No good reason exists for making an exception in bankruptcy proceedings."

II.

The exclusiveness of the United States District Court's jurisdiction in this case does not rest upon statute, but upon a general law.

When a trustee in bankruptcy asserts title on the part of the estate to property which is really owned by a stranger to the bankruptcy proceedings, a choice of remedies remains open to such owner, viz:

(1) He can either intervene *in the bankruptcy proceedings*, in which event the adversary claims will be dealt with as a "controversy arising in" and as part of the "proceedings in bankruptcy," which cannot be closed until such intervention shall be disposed of; or

(2) He can *bring his separate suit*, in which event the administration of the estate proceeds independently, and is not necessarily delayed by him, and his right to assert his claim is not cut off by the winding up of the estate. The only limitation as to the time for such suit is that he must begin it before the winding up of the estate, *or within two years thereafter*. Section 11d, Bankruptcy Act.

If such adverse claimant elects to bring a *separate suit*, the question remains as to what jurisdiction he shall proceed in. Naturally, the owner of a piece of property would not prefer to submit any question of his title to a purely administrative tribunal which had already, by taking possession of it in the court of administration of another person's estate, prejudged the question of title, and a national government which recognizes the importance of the individual does not force him into that position.

In order to establish the principle of legal justice that is here referred to, the Fifth Amendment provides that "no person shall be deprived of property but by due process of law," i. e., after a fair hearing in a court of complete jurisdiction to try causes between parties, as distinguished from an administrative tribunal. In the same spirit and to the same purpose the Bankruptcy Act, Section 23, more specifically provides that the United States Circuit Courts (since made to read "District Courts" by Section 291 of the Judicial Code) "shall have jurisdiction at law and in equity, as distinguished from proceedings in bankruptcy, between trustees as such and adverse claimants concerning the property acquired or claimed by the trustees, in the same manner and to the same extent only as though bankruptcy proceedings had not been instituted and such controversies had been between the bankrupts and such adverse claimants." Subdivision b of the section excepts "suits by the trustee under Sections 60b, 67e and 70e," but there is no exception under the bankruptcy law as to suits against the trustee.

They go into the Federal court by reason only of rules and provisions of the general law, among which is that relating to jurisdiction of courts—giving (as between two courts of competent concurrent jurisdiction) exclusive jurisdiction to the one having custody.

The exclusiveness of its jurisdiction would rest not on the provisions of any special statute, but upon that general principle of law relating to jurisdiction of courts which draws into one court, having a competent jurisdiction to try titles, jurisdiction to try all questions of title to property in its actual custody. *Murphy* v. *Jno. Hoffman Co.*, *infra*.

The principle is thus characterized by the Supreme Court in *Wabash R. R.* v. *Adelbert College*, 208 U. S. 54:

> "Those principles are of general application and not peculiar to the relations of the courts of the United States to the courts of the states."

Such a case was in the mind of the Supreme Court when they said in *Murphy* v. *Jno. Hoffman Co.*, 211 U. S. 568:

> "The Bankrupt Act * * * did not confer jurisdiction on the district courts over suits brought by trustees * * * to assert title * * * unless by consent. * * * The act, however, preserves the jurisdiction otherwise existing by statute. * * * But where the property * * * is in the actual possession of the court * * * there comes into play another principle, not peculiar to courts of bankruptcy. * * *

> When the court of bankruptcy, through the act of its officers, such as referees, receivers or trustees, has taken possession of a *res*, as the property of a bankrupt, it has ancillary jurisdiction to determine the adverse claims of strangers to it, and its possession cannot be disturbed by the process of another court."

The principle is thus stated in *Murphy* v. *Jno. Hoffman Co.*, 211 U. S. 569:

> "This ancillary jurisdiction may be exercised, though it is not authorized by any statute. The jurisdiction in such cases arises out of the possession of the property. * * *"

III.

The fact of custody by any tribunal does not of itself extend the jurisdiction of the court of custody to new subject matter, but only has the effect of making it exclusive where it was previously competent and concurrent with courts of excluded jurisdiction.

The courts to which ancillary jurisdiction is drawn are, to use the language of the same case, 211 U. S. 569, "courts of competent jurisdiction." See also 11 Cyc. 1010. For the custody of a purely administrative tribunal would not draw to it as such any exclusive jurisdiction to try title. And the custody of a court of jurisdiction strictly limited as to subject matter is not extended outside of such limits merely by custody. For this rule relating to courts of concurrent jurisdiction to operate the court of custody must be a court which, independently, has "jurisdiction of the class of

cases to which the particular case belongs." 15 C. J. 729. Therefore, a Federal Court will try a question of title to property in the hands of an administrator in the probate court of a state. *Byers* v. *McAuley*, 149 U. S. 620.

District courts, as courts of bankruptcy, have no general jurisdiction of title to property, but they only have jurisdiction of special kinds of trials of title of a very limited description as defined by sections 2 and 23 of the Act, viz.: suits by the trustee to recover property under sections 60b, 67e, and 70e, (S. 2 Cl. 7 as limited by *Bardes* v. *Bank*, 178 U. S. 535 and Ss. 23a and b as amended in 1903-1910), and suits against the bankrupt or his agents in possession, *Whitney* v. *Wenman*, 198 U. S. 552; and these powers they exercise not so much like courts of justice as like administrative tribunals. The bankruptcy court, as such, cannot by taking custody "create a jurisdiction that is forbidden by statute" *First N. Bk.* v. *Chi. Title & Tr. Co.*, 198 U. S. 1055.[24] But the Federal Districts Courts, under the general law, have a complete and unlimited jurisdiction to try title in all those cases where the parties or subject matter are of the kind which they were created to pass upon. When such circumstance of the possession of property compels a stranger to go into the Federal District Court it is contemplated that he will be treated, not like an intermeddler impeding an administration, but like he would be in the courts of his own state if the circumstance of custody had not deprived him of resort to them.

That is what the Supreme Court has in mind when saying in Wabash R. R. case, 208 U. S. 57:

> "The defendants in error must pursue their remedy in that court" (the Federal trial court), "which doubtless will consider the decisions of the state courts on questions of state law with the respect which the decisions of this court require."

Jurisdiction is determined under the allegations of the plaintiff's petition, (*Elliott* v. *Toeppner*, 187 U. S. 332; *Butler Etc. Co.* v. *Clark-Montana Co.*, Adv. Op. U. S. Sup. Ct., October term, 1918, 297) said by that test plaintiff's cause of action did not arise under the bankruptcy law, but by reason of contracts which the allegations showed were to be tested by the state law. In respect of the liens asserted by plaintiffs they rested upon contracts made before the property had any existence as an asset, and long prior to the four months period preceding bankruptcy. (*Jaquith* v. *Rowley*, 188 U. S. 620.)

That the advantage to the actual owner of adversely held property of having an ordinary judicial trial of title, over the speedy and less deliberative methods of adjudication obtaining in an administrative tribunal acting as such, is important, may be gathered from the fact that it is the duty of administrative tribunals to proceed expeditiously with the matter in hand, making the best and most prompt possible outcome for the creditors; while the great function of judicial tribunals is to give correct application to rules of law in controversies between parties, so that citizens may have confidence in the security of their rights and

assurance of "a fair opportunity to be heard" when they complain of any injustice or oppression.

In the bankruptcy proceedings "prompt adjudication," to use the language of this court in *Gratiot State Bank* v. *Johnson, supra*, is the aim of the bankruptcy law, and "*such expedition in proceedings would be impossible if each of the many widely scattered creditors is to be afforded a fair opportunity to be heard.*"

Of course it is not necessary for such creditors as the court refers to in that case to have a fair hearing because they are not bound, unless they voluntarily intervene; but when the proceedings is such as to be binding on one and is the only kind of proceedings open to him in view of the custody, he is certainly entitled to a judicial hearing, and should have "a fair opportunity to be heard," though it result in great delay, if he does not go voluntarily into those essentially "prompt" and "expeditious" proceedings for the assertion of his claim.

Concurrency of jurisdiction only exists in those cases where both courts independently of custody, are "vested with appropriate jurisdiction suitable to the nature of the case." *Claflin* v. *Hausman*, 93 U. S. 130; 11 Cyc. 996. "Statutes extending the right of appeal are remedial and should be liberally construed * * * and statutes which take away, change or diminish fundamental rights * * and statutes which provide new and extraordinary remedies must be construed strictly, both as to the cases embraced within their terms and as to the methods to be pursued." 36 Cyc. 1188.

It seems to follow that the fact of custody does not of itself make this case such a part of the bankruptcy proceedings as to render the jurisdiction of the Circuit Court of Appeals final under the amendments of 1915 and 1916.

IV.

Plaintiffs had a right, which they exercised, to make this a separate suit from the bankruptcy proceeding.

The case at bar is one in which the plaintiffs sued in the District Court of the United States as a court of general jurisdiction, in a separate plenary suit, as strangers to the bankruptcy proceedings, and not by way of intervention in the bankruptcy proceedings; the case took its regular position in due order of numbers on the equity docket and subpoena was prayed for and issued as in ordinary cases in equity.

It is implied in S. 11d that a stranger to the bankruptcy proceedings can bring a separate suit against the trustee for injury done him, and that such suit may even be brought after the estate is closed. That clause reads:

> "Suits shall not be brought by or against a trustee or a Bankrupt Estate subsequent to two years after the estate has been closed."

Loveland, while recognizing that an intervention, asserting an adverse claim of title, may be prosecuted "in the bankruptcy proceedings" in

which case it will be "a controversy arising in bankruptcy proceedings," (S. 829 p. 1452), says that an independent suit also may be brought in the Federal court, his language (S. 534 p. 1038), being as follows:

> "An independent suit may be brought in a court of bankruptcy irrespective of citizenship or amount in dispute to enforce a claim against property in custody of the court. Such a suit may be maintained on the theory that it is ancillary to the bankruptcy proceedings."

An intervention in the bankruptcy proceedings is described by Loveland (S. 411) as follows:

> "An intervening petition should be entitled in the District Court and bankruptcy proceedings. It may be as follows: "The District Court of the United States for the ————District. In Re A. B., Bankrupt."

The case at bar was separately styled, separately numbered and subpoena was prayed for the defendants. The statutes of limitation were pleaded by the defendant and overruled on the ground that *the suit was such a one as could have been filed at any time not less than two years after the bankruptcy was closed, under Section 11d of the Bankruptcy Act*, thus fully recognizing in the trial court the independent and separate nature of this suit.

V.

The trustee could have made the tactical sacrifice of admitting a transfer valid between the parties and pleading avoidance under Section 67e, in suit instituted by him, and thus have brought the case within the amendments of 1915 and 1916, but this he avoided; and in his answer in this case he did not so plead.

As pointed out in the petition for mandamus, the defendants made no plea in confession and avoidance, but stood upon pleas which put the plaintiffs to the full proof of their title.

The cases dealing with controversies arising in bankruptcy proceedings have been cases where the proceedings in question have been clearly in bankruptcy, and the controversy was presented in the course of and as part of the bankruptcy proceedings, rather than in the shape of a cause or proceeding additional to and separate from them; or, if it was separate, it was one brought by the trustee himself, admitting everything necessary to sustain the adverse claimant's title as against the bankrupt, but seeking to avoid it in behalf of creditors. *Stoats* v. *Security Trust Co.*, 243 U. S. 122.

VI.

The common law rule as to the exclusive jurisdiction of courts having custody is satisfied, without the necessity of running counter to other important principles, by requiring that such suits be confined to the United States District Court in the exercise of its general jurisdiction.

The amendment, in view of the constitutional jurisdiction of the Supreme Court, as above defined, could not have been aimed to create an exception of those cases in which the most fundamental questions of title arise between the trustee and strangers to the proceeding and which do not halt the administration, and in which neither party urges either of the sections mentioned in Section 23b. The reasonable limitation is that the amendment meant what the language fairly imports—"controversies arising *in the bankruptcy* proceedings"—not suits that are filed by strangers to the proceedings and tried separately with careful insistence upon preservation of all the adverse claimant's remedial rights, and leaving the administration to proceed separately. It applies to controversies as between two creditors, controversies between two or more intervening lien holders, controversies as between the trustee and some adverse claimant brought in either under the provisions of Sections 60b, 67e or 70e, or by his own consent as a defendant, or by his own voluntary intervention, and whose interference or participation necessarily begins before the estate is closed and keeps it open until finally disposed of.

VII

This being a suit in equity, and not an intervention in bankruptcy proceedings, the appellate jurisdiction is controlled by Section 241 and Section 128 of the Judiciary Act.

The Constitution, Article three, Section two, provides:

> "In all other cases before mentioned" (that is, in all to which Federal jurisdiction extends, except those in which its jurisdiction is original), "the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as Congress shall make."

Section 241 of the Judiciary Act provides for the exception to be ascertained by reference to the final jurisdiction of the Circuit Court of Appeals as follows:

> "In any case in which the judgment or decree of the Circuit Court of Appeals is not made final by the provisions of this title, there shall be of right an appeal or writ of error to the Supreme Court of the United States where the matter in controversy shall exceed one thousand dollars, besides costs." (36 Stat. L. 1157).

Section 128 of the Judicial Code makes the jurisdiction of the Circuit Court of Appeals final in a variety of cases, but it is clear that it is not by that section made final in those cases where the suit is prosecuted by one claiming as a

stranger and the plaintiff's cause of action is one against the bankrupt and arises under the laws of his state and is a property right claimed under general law and protected by the Constitution of the United States.

VIII.

Where the Circuit Court of Appeals originates a denial of a constitutional right, the Supreme Court has appellate jurisdiction notwithstanding the case as made up to that time is one over which the Circuit Court of Appeals' jurisdiction is final.

In this case the suit was brought in accordance with the opinion in the case of *Hebert* v. *Crawford*, 228 U. S. 208, relating to the same subject matter and parties, and fully recognizing the right of plaintiffs to prosecute this suit.

Plaintiffs, by their original bill as amended, showed they had caused the crop to be grown to create a special fund for payment of their debt, already partly secured. They showed in their pleading that on January 1st, 1906, and when they made the arrangement in January, 1906, for its cultivation, the debtors owed them $6117.03 bearing interest from January 1, 1906. That in order to make and save the crop they advanced $5209.45 additional, beginning in April, 1906; that in June, 1906, while the crop was growing in the field they agreed to take it over for the debt, advances and interest; that afterward in the winter, when the crop had been harvested they sold it for less than these sums of indebtedness. (Those were the

only allegations or proof as to its value. The mortgages to plaintiffs bore interest at eight per cent. The crop was not completely delivered to plaintiffs until after December 10, 1906. It yielded better and sold for a better price than was expected, and no one contemplated bankruptcy at the time of its purchase. Such was the undisputed evidence.)

To the pleadings above recited the defendant made no answer in confession and avoidance.

The plaintiffs discharged the burden of proof as to the transfer under the circumstances alleged, the only difference being that the indebtedness as pleaded was reduced by a credit of $750.60 and the trial court found that such transfer was agreed upon and not only valid but highly equitable and upheld the plaintiffs' claims throughout.

The Circuit Court of Appeals treated the case as if the defendant had pleaded or the plaintiffs admitted a transfer to the plaintiffs rendered void as to creditors by S. 67e, and held it to be so.

While the actual order entered in the Circuit Court of Appeals was an order of dismissal yet it is clear from the opinion that what that court did was to annul the transfer to plaintiffs, although they conceded it to be valid as between the parties to it. This was done in behalf of a trustee who had no pleadings to sustain the action of the court.

The majority in the Circuit Court of Appeals, in their opinion, treated the case as if the *pleadings of plaintiffs* constituted an admission that

the purchase had been made at an inadequate price with knowledge of insolvency and they held the sale to plaintiffs was in fraud of creditors.

Enough of plaintiffs' allegations are above stated to show that they could not be construed as admitting purchase at an inadequate price nor notice of intent to defraud.

In their opinion on the petition for rehearing, the court said:

> "But whether the petition * * * * is or is not to be regarded as showing that Moore was insolvent when he made the alleged sale, the *evidence in the case* shows that he was insolvent."

In their opinion on the petition for rehearing, in determining the adequacy of the price they took *the evidence*, where it was better for the defendants' side of the case *than the pleadings*. Thus they took the original debt of plaintiff at $5426.43 as proven, rather than $6117.03 as alleged.

Therefore we are justified in saying that they did not found their judgment on plaintiffs' pleadings.

They founded it on what they conceived to be *evidence* of purchase at an inadequate price with knowledge of insolvency, *and there was no pleading to justify such a judgment.*

The case of *Lutcher & Moore Lumber Company* v. *Knight*, 217 U. S. 267, was one of Federal jurisdiction depending on diverse citizenship, and therefore within its final jurisdiction, in which

the Circuit Court of Appeals took a similar action. In that case this court said:

> "The effect of the action of the Circuit Court of Appeals was substantially to deny to the plaintiffs in error in that court, petitioners here, their day in court; in other words, was equivalent to condemning them without affording them an opportunity to be heard."

In such case, *Castle* v. *Persons*, 54 C. C. A. 141, Justice Sanborn said:

> "The defense * * sustained at the trial, was a confession and avoidance which had not been pleaded * * an admission that Thomas did direct the defendant to pay the $5,000 to Maria, and that the defendant did agree to do so, coupled with an averment, not found in the pleadings, that this contract was void because it was made in contemplation of the immediate death of Thomas Persons * * This defense was inconsistent with the denial in the answer, was not made by the defendant in the action, and it formed no substantial basis for a judgment.
>
> That due process of law without which parties may not be deprived of their property gives to them an opportunity to be heard respecting the justice of the judgment sought. It gives notice of the issue to be determined before it is tried. One may not bring suit upon one cause of action and recover upon another, nor may he go to trial upon one defense and sustain a judgment in his favor upon another and inconsistent defense."

It would not be possible for Congress to take away from the people the right of resort to the Supreme Court's jurisdiction over such constitutional questions as these which arise for the first time in the Circuit Court of Appeals. To say that the Supreme Court could still exercise jurisdiction by certiorari is no answer to this argument because the power to issue certiorari is merely a discretionary power of the court and gives no right to a citizen as such, whereas the constitutional limitations contained in such passages as the 5th Amendment were clearly privileges conferred on the individual as such, and demanding in his behalf, a right on his part to the remedies requisite for enforcement.

To say the least, there could be no limitation of this remedial right arising from implication. It would have to be by clear express exception. Sutherland on Statutory Construction, S. 396. But the implications are the other way. Sections 238 and 241 of the Judicial Code indicate a purpose that the Supreme Court should have jurisdiction in all cases where a constitutional right has been denied. Section 23 of the Bankruptcy Act indicates a purpose that the existence of bankruptcy proceeding should not deprive any ordinary citizen of the remedies open to him for protection of his property rights, so long as he does not voluntarily go into those proceedings to assert his rights.

Respectfully,

SOL. E. GORDON,
A. D. LIPSCOMB.

A. D. Lipscomb
Of Counsel for Petitioner

IN THE

SUPREME COURT OF THE UNITED STATES OF AMERICA

Petition of J. E. Broussard et al. for Mandamus to Compel Allowance of Appeal from the Circuit Court of Appeals of the Fifth District.

In the case of

WALTER J. CRAWFORD, TRUSTEE, *Appellant*, vs. No. 3 J. E. BROUSSARD ET AL., *Appellee*.	No. 3325. In the Circuit Court of Appeals, Fifth Circuit.

HORACE CHILTON,
E. R. SPOTTS,
U. F. SHORT,
Attorneys for Appellant.

IN THE

SUPREME COURT OF THE UNITED STATES OF AMERICA

Petition of J. E. Broussard et al. for Mandamus to Compel Allowance of Appeal from the Circuit Court of Appeals of the Fifth District.

In the case of

WALTER J. CRAWFORD, TRUSTEE, *Appellant*, vs. No. 3 J. E. BROUSSARD ET AL., *Appellee*.	No. 3325. In the Circuit Court of Appeals, Fifth Circuit.

Now comes Walter J. Crawford, Trustee, appellant, and prays leave of the Court to submit the following answer to appellees' application for a mandamus, and says:

Moore & Bridgeman, a copartnership composed of E. F. Moore and F. W. Bridgeman, filed their voluntary petition in bankruptcy in the United States District Court for the Eastern District of Texas, on the 16th day of July, 1906.

Said partnership and each of the individuals com-

posing it were on the 26th day of said month adjudged bankrupts. Schedules of assets and liabilities were made part of said petition. Liabilities exceeded $32,500. The assets were of greatly less value.

The Beaumont Rice Mills, a partnership composed of appellees, held a mortgage dated the 28th day of July, 1904, securing the payment of debts aggregating $14,345. They held an additional mortgage dated the 16th day of December, 1904, securing debts amounting to $11,200, as shown on pages 83 and 85 of the record in said cause.

In the beginning of 1906 they owed the Houston Rice Mills $12,492, partially secured by a mortgage (Tr. pp. 115 and 196). They owed rent, $4000, a secured debt to the Parlin & Orendorff Company of $473.92, and other unsecured demands, amounting to $6015.29 (Tr. p. 196). Broussard, the manager of the Beaumont Rice Mills, testified they had been doing business with Moore & Bridgeman for a number of years; that he knew all about their financial affairs; that in 1906 they owned a lot of farm implements and mules and horses. All were embraced in mortgages to the Beaumont Rice Mills, and the Houston Rice Mill Company. Some agricultural implements and machinery were bought from the Parlin & Orendorff Company, and from another company. They were covered by the mortgages.

That he did not really know what property Moore & Bridgeman had in 1906 that was not covered by mortgages. "They did not have any property within

my knowledge that was not covered for all it was worth. When Moore & Bridgeman undertook to rent the McCrimmin rice farm we found it necessary to become his guarantor, and we guaranteed the payment of his expenses" (Tr. p. 96).

On page 141 Broussard stated under oath that about the 1st of January, 1906, Moore was indebted to the Beaumont Rice Mills in the sum of $6177.03, including the indebtedness of Moore & Bridgeman, which had been assumed by Moore. That they were also indebted to the Houston Rice Milling Company and others. That all the indebtedness to the Houston Rice Milling Company was due, and was secured by a mortgage on nearly all, probably eighty per cent. of the property of both Moore and Bridgeman, and the Houston Rice Milling Company had obtained a mortgage and contract by which they were to have all the crops to be raised during the year 1906 by said Moore & Bridgeman, in consideration of $6000 to be advanced for supplies during the year, and that they were then in a condition of insolvency, though not adjudged bankrupts (Tr. p. 141).

On the 9th day of January, 1906, E. F. Moore leased from J. C. McCrimmin 350 acres of land, to be cultivated in rice for a period of five years, and was to pay $3 per acre rent for all suitable for cultivation and cultivated during the life of the lease. The lease was signed by each of the parties. The acknowledgment of E. F. Moore was taken by P. A. Bowlen on the 11th day of January, 1906, and that of J. C. Mc-

Crimmin was taken before John S. Stone, a notary public in Lamar county, Texas (Tr. pp. 86-87).

E. F. Moore testified on page 105 that he leased the McCrimmin land at $3 per acre, and planted it in rice. At the beginning of the year 1906 he had to borrow money to enable him to cultivate the rice from the Beaumont Rice Mills. On page 106 he states he was to get the seed and $500 from them. That he intended to cultivate 1000 acres on the Stengele farm and 280 acres on the McCrimmin farm. That the reason he borrowed $6000 for the 1000 acres and only $1000 for the 280 acres was that he had some money and quite a lot of feed and was trying to pay the Beaumont Rice Mills what he owed them.

F. W. Bridgeman testified on page 122 that Broussard, representing the Beaumont Rice Mills, agreed to furnish the seed and $50 in money and $500 for feed to put thec rop in.

On page 114 he stated that Broussard agreed to furnish $500 in cash and $500 in horse feed.

On page 110 Moore testified that $500 in seed and $500 in addition thereto was all he was to furnish. A mortgage in the form of a bill of sale was executed by Moore to J. E. Broussard on the 5th day of April, 1906, to secure the payment of the $1000 advanced by him to Moore. It was filed for registration as a chattel mortgage (Tr. pp. 63-64).

This mortgage was filed April 5, 1906. The bankrupts probably owed the Beaumont Rice Mills the debts secured by the mortgages dated the 28th day of July,

1904, and the 16th day of December of that year, and $1000 advanced by Broussard to cultivate the crop of rice grown by Moore on the McCrimmin land for the year 1906.

In July, 1906, Bridgeman took a number of his teams to Louisiana to engage in railroad construction. They were seized by a creditor under a writ of attachment. The bankrupts undertook to regain possession. They first conferred with their creditors who held liens upon the property and requested their assistance to recover them. They engaged the services of Attorney G. P. Daugherty for this purpose. He applied to the largest secured creditor, the Houston Rice Milling Company, to file a replevin or take some proceeding to have the property released, so that the teams could be returned and used in harvesting the rice crop on the Stengele farm (Tr. p. 117). This creditor refused to take any action.

Bankrupt Moore and his attorney, Daugherty, next conferred with Broussard, representing the Beaumont Rice Mills, the second largest creditor. Their purpose was to recover the teams held under attachment in Louisiana. They resolved upon bankruptcy, and the petition in bankruptcy was filed for this purpose (Tr p. 120).

The schedule of assets and liabilities were prepared. The Beaumont Rice Mills were scheduled as a creditor for $9000, partially secured. The Houston Rice Milling Company was scheduled as a secured creditor. The liabilities as shown by the schedules amounted in

all to more than $32,500, with assets greatly less. E. J. LeBlanc, a partner in the Beaumont Rice Mills, was appointed trustee by the Referee. He qualified with Broussard as a security on his bond. Nominally he tok charge of the assets of the bankrupts. Crops of rice grown on the Stengel and McCrimmin farms came into his possession. All the live stock, implements and other property were ostensibly in his possession. He never disturbed the bankrupts in their farming operations. They remained in charge of the teams, crops and other property. No inventory was filed. The McCrimmin rice was withheld from the schedule of assets, although it was taken in charge by the trustee. Creditors ascertained that the bankrupts had never been disturbed in the possession of their property, and that the McCrimmin rice had never been scheduled as an asset. This, however, was not until after the rice had all been harvested.

The Beaumont Rice Mills kept on their books whatever accounts of the bankrupts' business that were kept at all after their partner, LeBlanc, was installed as trustee. Creditors filed a petition for the removal of LeBlanc as trustee, because of his failure to file an inventory and of the fact that the business of the partnership was conducted without any sort of regard to the interest of creditors. When their application was filed LeBlanc tendered his resignation, accompanying the same with what purported to be an account of all the business done by him as trustee. He failed to account for the McCrimmin rice. The creditors ex-

cepted to his report, because of this failure and other irregularities complained of, charging that the McCrimmin rice belonged to the bankrupts and was a part of their estate and had come into the possession of said trustee as such. For the first time LeBlanc undertook to defend the action of the creditors in their efforts to charge him with the value of the McCrimmin rice, by asserting that it belonged to his partnership, the Beaumont Rice Mills; that they had purchased it on or about t he 15th day of June, 1906, agreeing to cancel their liabilities to that firm in payment.

The creditors replied that this claim was a fraud, in fact; that no such purchase had ever been made; that the Beaumont Rice Mills and the bankrupts had colluded for the purpose of cheating and defrauding the creditors out of the value of this property, and that the fraud which they had invented for that purpose was concocted after the bankruptcy proceeding had been undertaken and after the rice had come into the possession of the trustee. In proof of this charge the creditors showed that the Beaumont Rice Mills were scheduled as a secured creditor for the sum of $9000. That this debt had never been cancelled. That the property which it was pretended was given in payment had never passed from the possession of the bankrupts. That the Beaumont Rice Mills had continued their accounts against the bankrupts upon their books without any credit showing their payment.

The evidence of both Moore and Bridgeman showed that no such sale had ever been made. When the

schedules were prepared by the lawyer, Daugherty, no such a settlement was ever pretended, but he put the Beaumont Rice Mills in as a creditor, and both bankrupts swore they were creditors, to the amount of $9000, because that was the information furnished him. If any such settlement had been made as a sale of the McCrimmin rice in payment of this debt on the 15th day of June—a month before the schedules were filed—it was never thought of at the time the schedules were filed.

Upon a trial of all these issues before the Referee it was held that he had no jurisdiction of the matter in controversy, but he at the same time held that the evidence was not sufficient to show a sale of the property to the Beaumont Rice Mills. The trustee had, however, acting in collusion and jointly with his co-partners, the appellees in this case, taken and appropriated the McCrimmin rice.

Upon a trial of the right of property before the Judge of the District Court he held and declared that the property belonged to Moore, bankrupt; that he had never sold it; that it came into the possession of the trustee as the property of the bankrupt, and that he was justly chargeable with its value. The evidence sustained the finding of the trial judge. The case was taken upon a petition for review and appealed to the Circuit Court of Appeals, where on a trial of it in the year 1909 the decision of the lower court was affirmed. When the mandate was sent down and the trustee failed to comply with the order of the Court to pay

the value of the rice into its registry the creditors filed a petition for an order directed to the trustee to show cause why he did not either comply with the order of the Court directing the payment or show cause why he should not be fined for contempt. Thereupon the partners constituting the Beaumont Rice Mills brought a suit in the State Court against their co-partnership, LeBlanc, in which they stated the facts substantially as they occurred about the possession of the McCrimmin rice, and of his being charged with the value of it, and directed to pay it into the registry of the court, and that he was threatening to deplete the resources of his partnership by withdrawing the sum necessary to meet the order of the Court without their knowledge or consent, and praying that he be enjoined and restrained from doing so.

The Beaumont Rice Mills had defended the action of the creditors in undertaking to charge the trustee with the value of the rice, and being defeated in its efforts, undertook to try the right of property again in the State Court, under the pretense of charging their partner with withdrawing the funds for the purpose of paying his debt.

Appellant brought his action in the United States District Court to restrain the plaintiffs in the State Court from endeavoring to try the right of property in the rice, which had been taken in charge by the Bankrupt Court and was in the possession of the trustee. He made no effort to interfere with any action between the partners.

A writ of injunction was issued enjoining the trial of the right of property in the State Court. The cause was tried on bill and answer, and the injunction was made permanent. It was appealed to the Circuit Court of Appeals for the Fifth Circuit, and finally to this Court, where the judgment of the lower court was affirmed, so far as it prevented the plaintiffs in the State Court from their undertaking to try the right of property, and reversed so far as it restrained the plaintiffs in said action from trying their case against their co-partner, enjoining him from withdrawing their funds to pay the judgment rendered against him. The result of that action is declared in the case of Hebert vs. Crawford, 228 U. S., 208.

When the mandate from this Honorable Court was sent down the plaintiffs in the State Court proceeded with the trial of their action. This appellant maintained on the trial of said cause that LeBlanc had never threatened to take the funds of his partnership to pay the judgment against him; that he never in fact took said funds; that the Beaumont Rice Mills paid said debt voluntarily, out of contrition because they were really the principals in purloining the property of the bankrupts from the U. S. District Court, and had used their co-partner as a tool to effect this purpose.

Upon the trial of the issues made in said cause the Court found as a fact that LeBlanc had never threatened to take the funds of his partnership to pay the debt; that he never in fact took them, and that

the appellees paid the debt willingly and voluntarily (Tr pp. 191-192).

Appellees herein appealed from the judgment rendered against them in said cause to the Court of Appeals for the Ninth District, and the judgment of the trial court was affirmed on appeal.

Application made to the Supreme Court of the State for a writ of error by appellees was denied. The judgment of the trial Court thereby became final.

They next resorted to this action in the United States District Court, where the fund sought to be recovered is held by the appellant as truee, for its recovery. Upon a trial of it in the lower Court appellees were successful. Upon appeal to the United States Circuit Court of Appeals the judgment of the State Court was reversed, with directions that the appeal be dismissed.

Appeal is now sought to this Court. Application for allowance of the appeal was denied by the Chief Justice who tried the cause, because the judgment of that Court is final, and no appeal therefrom is allowed by the Acts of Congress.

The appellant maintains that the judgment of the Circuit Court of Appeals which heard and determined the case is final, and that no appeal can be taken therefrom, and that the act of the Justice in refusing the application for the allowance of an appeal is correct.

LeBlanc, one of the partners in the Beaumont Rice Mills, became trustee of the estate of of the bankrupts and took all their property, including the rice in con-

troversy, into his possession. The Beaumont Rice Mills used him for the purpose of taking and appropriating the rice in controversy. They kept his accounts on their books. He was under their authority and control, and in conjunction with his co-partners took the rice belonging to the bankrupts for the benefit of his partnership When the creditors undertook to charge him with its value he pleaded the title of his partnership. The partnership itself, in the name of LeBlanc, claimed the property, and the pretended purchase of it by Broussard, representing the partnership, was urged before the Court. The Court was satisfied that the pretended purchase was a fraud or trick resorted to by all the partners in the Beaumont Rice Mills and acquiesced in by the trustee partner for the purpose of taking and appropriating that portion of the bankrupts' property in the hands of the trustee.

Failing in their efforts to recover the property in the bankrupt court in the litigation urged in the name of their trustee partner, appellees undertook to continue their contentions in the State Court, where they were again unsuccessful. They have made their third, and it is to be hoped their final, effort to complete the perpetration of their fraud by returning to the bankrupt court and claiming it in the action in which this appeal is sought.

The property in controversy came into the possession of the trustee after his appointment and qualification, beyond all question. This Court, speaking through Justice Lamar, in the case of Hebert vs. Crawford,

U. S. Sup. Court Rep., 57 L. Ed., page 803, said: "When the Court of Bankruptcy through the act of its officers, such as referees, receivers or trustees, has taken possession of the res it has ancillary jurisdiction to hear and determine adverse claims of creditors to it, and that its possession cannot be disturbed by the process of another court. Citing Murphy vs. John Hoffman Co., 211 U. S., 562, 569, 570; 53 L. Ed., 327, 330, 331; 29 Sup. Ct. Rep., 154, and authorities.

"Nor was this jurisdiction lessened because LeBlanc, Trustee, after gathering the crop delivered the rice into the possession of the Beaumont Rice Mills at their ware-house. The Court had possession of the property, and jurisdiction to hear and determine the interest of those claiming a lien therein or ownership thereof. This jurisdiction cannot be ousted by a surrender of the property by the receiver without authority of the Court. Whitney vs. Wenman, 198 U. S., 553; 49 L. Ed., 1161; 25 Sup. Ct. Rep., 778."

Under these decisions the physical possession of the crop brought the property within the exclusive jurisdiction of the bankrupt court. The finding in the summary proceeding that LeBlanc had received possession as trustee was conclusive against him, and was not subject to collateral attack by third persons. Noble vs. Union Pacific Logging Co., 147 U. S., 173, 174; 37 L. Ed., 126, 127; 13 Sup. Court Rep., 271, and cases cited.

The bankrupt court alone had jurisdiction to hear

and determine any question concerning the property which came into the possession of its officer.

The appellees in this case commenced this action in the bankruptcy court, where the administration of the bankrupts' estate was pending. It was the only court that had jurisdiction of the subject of the action. It is a part of the estate of the bankrupts in the possession of the trustee, and no other court could hear or determine the matters complained of in the appellee's appeal.

The decree of the Circuit Court of Appeals, from which appellees undertook to appeal in this case, was made final by the Act of Congress of January 28, 1915, 38 Stat. at Law, 804, Ch. 22. And the only right of review in this Court is by writ of certiorari. The Act provides that the judgments and decrees of the Circuit Courts of Appeals in all proceedings and cases arising under the Bankruptcy Act and in all controversies arising in such proceedings and cases shall be final, save only that it shall be competent for the Supreme Court to require by a certiorari upon the petition of any party thereto that the proceeding, case or controversy be certified to it for review and determination with the same power and authority as if taken to that court by appeal or writ of error. But certiorari shall not be allowed in any such proceeding, case or controversy unless the petition therefor is presented to the Supreme Court within three months from the date of such judgment or decree.

In the case of William B. Staats Co. et al. vs. The

Surety Trust & Savings Bank as Trustee, U. S. Sup. Ct. Rep., 61, L. Ed., p. 632, this Court, speaking by Mr. Justice Day, says: "The language of this Act is very comprehensive and embraces proceedings and cases arising under the Bankruptcy Act and controversies arising in State proceedings, and provides that the judgments an ddecrees of the Circuit Court of Appeals in such controversies, proceedings and cases shall be final. The case now under consideration is a controversy arising in a bankruptcy proceeding. Hewitt vs. Berlin Mach. Works, 194 U. S., 296, 48 L. Ed., 986, 24 Sup. Ct. Rep., 690; Coder vs. Arts, 213 U. S., 223, 53 L. Ed., 772, 29 Sup. Ct. Rep., 436; 16 Anno. Cases, 1008; Tefft, W. & Co. vs. Munsuri, 222 U. S., 114, 56 L. Ed., 118, 32 Sup. Ct. Rep., 67; Barnes vs. Pampel, 113 C. C. A., 81 (C. C. A. 6th C.), 192 Fed., 525.

"We find no merit in the contention that after the passage of the Act of 1915, appellate proceedings in this court in such suits as this should continue to be controlled by the general provisions of the Judicial Code. This Statute manifested the purpose of Congress to relieve this court from the necessity of considering cases of this character except when brought here by writ of certiorari. Central Trust Co. vs. Lueders, 239 U. S., 11 60 L. Ed, 119, 36 Sup. Ct. Rep., 1; Shattuck vs. Title Guaranty & Surety Co., 239 U. S., 637; 60 L. Ed., 480, 36 Sup. Ct. Rep., 446.

"It follows that the motion to dismiss this appeal for want of jurisdiction must be granted.

"Appeal dismissed."

The claim to the value of the rice in this case is a controversy arising in the bankrupt proceeding pending in the U. S. District Court for the Eastern District of Texas. The judgment of the U. S. Circuit Court of Appeals is final. No appeal will lie from it, and the Justice properly refused the allowance of the appeal. The appellant respectfully submits that the application for a mandamus to compel the allowance of an appeal ought to be denied.

All of which is respectfully submitted.

HORACE CHILTON,
E. R. SPOTTS,
U. F. SHORT,
Attorneys for Appellant.

IN THE

Supreme Court of the United States.

UNION TRUST COMPANY, OF ROCHESTER, NEW YORK, AND CENTRAL BANK, OF ROCHESTER, NEW YORK, PETITIONERS,

vs.

WOODWARD & LOTHROP, A CORPORATION.

Petition for Allowance of Appeal From a Decree of the Court of Appeals of the District of Columbia and Brief in Support Thereof.

WM. G. JOHNSON,
Counsel for Petitioners.

THE LAW REPORTER PRINTING COMPANY, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

UNION TRUST COMPANY, OF ROCHESTER, NEW YORK, AND CENTRAL BANK, OF ROCHESTER, NEW YORK, PETITIONERS,

vs.

WOODWARD & LOTHROP, A CORPORATION.

Petition for Allowance of Appeal From a Decree of the Court of Appeals of the District of Columbia.

To the Honorable, The Supreme Court of the United States:

The petitioners, Union Trust Company, of Rochester, New York, and Central Bank, of Rochester, New York, respectfully show:

That in an equity cause, pending in the Court of Appeals of the District of Columbia, wherein Woodward & Lothrop, a corporation, was sole appellant, and petitioners were the only appellees, a decree was entered on January 5, 1920, against petitioners, and the amount in controversy exceeds the sum of three thousand dollars, exclusive of interest and costs. Petitioners are advised that they are entitled, as of right, to an appeal from said decree to the Supreme Court of the United States, under the third clause of section 250 of the Judicial Code (36 Statutes, 1159), because said case involves the

construction and application of the Constitution of the United States, to wit, the Fifth Amendment thereto.

That on January 31, 1920, petitioners prayed said Court of Appeals to allow an appeal from said decree, to this Honorable Court, under the third clause of said section 250 of the Judicial Code, which petition the Court of Appeals denied.

Said decree of the Court of Appeals deprives petitioners of their property and property rights, without due process of law, in violation of the Fifth Amendment to the Constitution of the United States, in that it deprives petitioners of the sum of $3,486.53, by giving conclusive effect, against petitioners, to a prior decree, in another equity cause, wherein petitioners were not parties, were never served with process in any form, never appeared, and were not in privity with any party to said cause.

The facts upon which petitioners base their right of appeal are not disputed by any party to the cause, appear upon the record thereof, and are as follows:

(*a*) In September, 1913, Woodward & Lothrop was indebted to the John Hofman Company, a corporation, of Rochester, New York, in the sum of $9,813.79, for store furniture manufactured by the Hofman Company for Woodward & Lothrop, for use in a store building in Washington, D. C.

(*b*) In said month of September, 1913, the Hofman Company borrowed from petitioners divers sums aggregating $11,450, and to secure payment thereof it executed valid assignments to petitioners of the said balance due to it from Woodward & Lothrop, which assignments vested in petitioners the Hofman Company's title to said entire balance.

(*c*) That Woodward & Lothrop were duly notified of said assignments to petitioners on November 11, 1913, and on January 13, 1914.

(*d*) The Hofman Company made no other assignment to anyone whomsoever of said balance due by Woodward & Lothrop or of any part thereof.

(*e*) In December, 1913, three months after the assignment to petitioners, divers firms and corporations filed notices of mechanics' liens against certain real estate in the city of Washington, belonging to Woodward & Lothrop for sums claimed to be due to them from the Hofman Company, for work and materials claimed to have been furnished by them to said Hofman Company for use in the manufacture of said furniture and they claimed that said furniture constituted fixtures, annexed to the realty, and thereby said real estate was subject to mechanics' lien in their favor.

(*f*) On April 20, 1914, the bill in this case was filed by one of said lienors against all others who had filed notices of lien, and against Woodward & Lothrop and the Hofman Company, to enforce payment of the alleged liens, out of the balance due by Woodward & Lothrop to the Hofman Company which said balance had theretofore been assigned to petitioners, and after the cause was at issue, on October 30, 1915, it was referred to a special master to take the proofs and to report his findings of fact and conclusions of law.

(*g*) In November, 1915, these petitioners were allowed to intervene therein, as assignees of the Hofman Company, to claim the balance of the fund, due by Woodward & Lothrop, under their assignments, against the claims to said balance set up by the lienors. The master found, as a fact, that the furniture manufactured under the Hofman contract was in no way affixed to the realty and as a conclusion of law that no right of mechanics' lien existed therefor, in favor of the lienors. All parties to the cause acquiesced in these findings and conclusions of the special master.

(*h*) In the hearing before the master, Woodward & Lothrop claimed credit against the balance due by it, which had been assigned to the petitioners, for the sum of $3,486.53, being an amount Woodward & Lothrop had paid to Pittsburgh Plate Glass Company under a decree rendered one year and five months after the assignment to petitioners, in a suit begun four months after such assignment. Petitioners were not parties to said suit nor in privity with any party thereto and never appeared therein, and they objected, before the master, to the allowance of said sum as a credit against the balance due to Hofman Company and theretofore assigned to them. The master allowed the credit, however, and petitioners excepted.

(*i*) The Supreme Court of the District of Columbia sustained petitioners' exception and disallowed this claim of credit by Woodward & Lothrop and decreed that Woodward & Lothrop pay to petitioners this additional sum of $3,486.53, and Woodward & Lothrop appealed to the Court of Appeals.

The Court of Appeals reversed the decree of the Supreme Court of the District of Columbia and allowed the credit to Woodward & Lothrop, solely on the ground that the decree in the other case, to which petitioners were not parties, as aforesaid, was *res judicata* as to petitioners, the Court of Appeals saying, in its opinion:

> "Counsel assert that it should have been ruled in this proceeding that the asserted lien of the Pittsburgh Plate Glass Company was without foundation. That question was not before the court, having been finally adjudicated in another proceeding."

On January 21, 1920, within the time prescribed therefor by its rules, petitioners filed a petition in the Court of Appeals for a rehearing on the ground that the decree

of the said Court of Appeals deprived petitioners of their property and property rights, without due process of law, in violation of the Fifth Amendment to the Constitution of the United States, in giving conclusive effect against petitioners to the said proceedings by the said Pittsburgh Plate Glass Company, but the said Court of Appeals denied said petition and refused a rehearing.

A copy of the opinion of the Court of Appeals and of the petition for rehearing and allowance of an appeal, and the said court's denial thereof are submitted herewith as an appendix. A certified copy of the record in said cause is filed with the clerk of this court.

Petitioners are advised that the question here presented has been decided by this court in the case of Postal Telegraph Cable Co. *vs.* Newport, 247 U. S., 464, in which it is held that a court (p. 476):

> "can not, without disregarding the requirement of due process, give a conclusive effect to a prior judgment against one who is neither a party nor in privity with a party therein."

Petitioners therefore respectfully pray:

That an appeal to this court from the said decree of the Court of Appeals be allowed to petitioners to the end that said cause may be reviewed by said Supreme Court of the United States and justice done to petitioners in that behalf.

UNION TRUST COMPANY, OF
ROCHESTER, NEW YORK,
CENTRAL BANK, OF ROCHESTER,
NEW YORK,
By WM. G. JOHNSON, *Their Counsel.*

DISTRICT OF COLUMBIA, *ss.*

William G. Johnson being duly sworn, deposes and says that he is counsel for petitioners in the above

application for allowance of appeal and also represented them in both the courts below; that he prepared the foregoing petition and has personal knowledge of the facts therein stated and that the same are true.

WM. G. JOHNSON.

Subscribed and sworn to before me this twenty-fifth day of February, 1920.

J. WILLIAM REILY,
Notary Public, D.C.

IN THE

Supreme Court of the United States.

UNION TRUST COMPANY, OF ROCHESTER, NEW YORK,

AND

CENTRAL BANK, OF ROCHESTER, NEW YORK, PETITIONER,

vs.

WOODWARD & LOTHROP, A CORPORATION.

Brief in Support of Petition for Allowance of an Appeal From a Decree of the Court of Appeals of the District of Columbia.

The right of an appeal in this case is claimed under section 250 of the Judicial Code (36 Stat., p. 1159), which provides that:

> "Any final judgment or decree of the Court of Appeals of the District of Columbia may be re-examined and affirmed, reversed or modified by the Supreme Court of the United States, upon writ of error or appeal, in the following cases:
>
> . . . . . .
>
> Third. In cases involving the construction or application of the Constitution of the United States."

It is claimed that the construction and application of the Constitution of the United States are involved in this case and the ground for the contention is as follows:

The John Hofman Company, of Rochester, had, in

September, 1913, assigned to petitioners the entire balance of money due to it from Woodward & Lothrop for store furniture made by Hofman Co. for Woodward & Lothrop.

Woodward & Lothrop was notified of the assignments on November 11, 1913, and January 13, 1914. The sole question in the case was how much did Woodward & Lothrop owe.

In the hearing before the master Woodward & Lothrop claimed credit for the sum of $3,486.53. The sole basis for this claim of credit was the payment of that amount under a decree in another suit, brought by the Pittsburgh Plate Glass Co. against petitioners' assignor, the Hofman Co. and Woodward & Lothrop to enforce an alleged mechanics' lien for material and labor claimed to have been supplied to Hofman Company for some of the store furniture. The claim of Pittsburgh Plate Glass Company was first made *December 27, 1913, three months after the assignment to petitioners*, the suit to enforce it was not brought until January 21, 1914, *four months after said assignment*, and eight days after the *last* notice to Woodward & Lothrop of the assignments to petitioners. The case was not contested and the decree was rendered, by default, against Hofman Company, which was proceeded against by publication, in February, 1915, *a year and four months after* the assignment to petitioners.

The petitioners were not parties to the suit, they were not in privity with any party thereto, were never served with process and never appeared therein.

Petitioners objected to this allowance, but the master allowed it and petitioners objected and excepted. The Supreme Court of the District heard the objection of petitioners, *ore tenus*, at the bar, and disallowed the credit, so that petitioners were not *required* to set up, and *could not* set up, in any form of pleading, any constitutional or other objection, *because the question was*

merely one of evidence and the judgment of the court was in their favor.

Woodward & Lothrop appealed to the Court of Appeals and that court reversed the decree of the Supreme Court of the District of Columbia, and held that the decree in the other case was *res judicata* against petitioners.

The only matter in controversy was this credit claimed by Woodward & Lothrop, and, as the only basis for its allowance was this decree in the other suit *the controlling and only question* in the case was whether that decree was conclusive upon petitioners. This court has decided that to give conclusive effect to a prior judgment against one who is not a party nor in privity with a party therein is violative of the due process of law assured by the Constitution.

In the case of Postal Telegraph Cable Co. *vs.* Newport, 247 U. S., 464, Justice Pitney says (pp. 475-6):

> "Waiving the doubt whether, under the particular facts of this case, the question of *res judicata* can be regarded as independent of the federal questions that were raised, we are of the opinion that the decision reached upon *it is so clearly ill founded that it can not sustain the judgment*, and this for the reason that it *is inconsistent with another federal right of defendant, fundamental in character.*
>
> "The doctrine of *res judicata* rests at bottom upon the ground that the party to be affected, or some other with whom he is in privity has litigated or had an opportunity to litigate the same matter in a former action in a court of competent jurisdiction. Southern Pacific R. R. Co. *vs.* United States, 168 U. S., 1, 48; Greenleaf Ev., secs. 522-523. *The opportunity to be heard is an essential requisite of due process of law in judicial proceedings.* Windsor *vs.* McVeigh, 93 U. S., 274, 277; Louisville & Nashville R. R. Co. *vs.* Schmidt, 177 U. S., 230, 236; Simon *vs.* Craft,

> 182 U. S., 427, 436. And as a State may not, consistently with the Fourteenth Amendment, enforce a judgment against a party named in the proceedings without a hearing or an opportunity to be heard (Pennoyer *vs.* Neff, 95 U. S., 714, 733; Scott *vs.* McNeal, 154 U. S., 34, 46; Coe *vs.* Armour Fertilizer Works, 237 U. S., 413, 423), *so it can not, without disregarding the requirement of due process, give a conclusive effect to a prior judgment against one who is neither a party nor in privity with a party therein.*"

As the sole matter before the court was the effect to be given to that judgment, against petitioners, the construction and application of the Constitution of the United States were *necessarily involved* and constituted not only the *controlling*, but the *only* question before the court. The instant the judgment was held to establish a right against petitioners, the question of due process of law, under the Constitution, arose, and, until it was so held by the court, no opportunity existed for invoking constitutional protection. The violation of due process of law occurred for the *first time*, when the Court of Appeals, *in its opinion*, held that the court below must give conclusive effect to that judgment. Petitioners then pointed out its constitutional objection to this holding of the appellate court in their petition for rehearing, filed within the rules, and before the mandate issued. The case, therefore, was still pending, because as ruled by this court in Merrimack River Savings Bank *vs.* Clay Center, 219 U. S., 527, 536, an "*appeal must be considered as pending and undisposed of until a mandate issues.*"

When, as here, there is but one question in the case, the response to which is the sole basis for the judgment, and that sole question is determinable *only* by the construction and application of the Fifth Amendment to

the Constitution, it is respectfully submitted that the case is not only one involving the construction and application of the Constitution of the United States,

As said by this court, in Tennessee *vs.* Davis, 100 U. S., 257, 264, a case "may truly be said to *arise under the Constitution* or a law or a treaty of the United States whenever its *correct decision* depends upon the construction of either."

WM. G. JOHNSON,
Counsel for Petitioners.

APPENDIX.

Opinion of Court of Appeals, Petition for Rehearing, Order Denying Same, Petition for Allowance of Appeal to the Supreme Court of the United States and Order Denying Same.

IN THE

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

Nos. 3260 and 3261.

WOODWARD AND LOTHROP, INCORPORATED, APPELLANTS,

vs.

UNION TRUST COMPANY, OF ROCHESTER, NEW YORK, AND CENTRAL BANK, OF ROCHESTER, NEW YORK, CORPORATIONS, INTERVENORS, APPELLEES,

and

UNION TRUST COMPANY, OF ROCHESTER, NEW YORK, AND CENTRAL BANK, OF ROCHESTER, NEW YORK, CORPORATIONS, INTERVENORS, APPELLANTS,

vs.

WOODWARD & LOTHROP, INCORPORATED, APPELLEES.

These appeals involve a decree in the Supreme Court of the District sustaining certain exceptions and overruling other exceptions to the report of a Special Master in a case growing out of a suit to enforce mechanics' liens.

In June of 1913, Woodward & Lothrop contracted with F. T. Nesbitt Company, of New York, for the erection of a store building at Eleventh and F Streets Northwest, in this city, and, at about the same time, contracted with the John Hofman Company, of Roches-

ter, New York, for the furnishing and installation, for $31,000, of the store fixtures in the new building and in parts of the adjoining old building. This installation was completed in December, following.

During the month of September, 1913, and while the contract of the Hofman Company was being executed, that company borrowed sums of money from the Central Bank, of Rochester, aggregating more than $16,000, for which it gave its promissory notes and executed assignments of money due and to become due from Woodward & Lothrop, the balance due under these assignments when the work was completed being $9,280. During the same month the Hofman Company borrowed from the Union Trust Company, of Rochester, $5,000, under the same conditions, and there was a balance due under that assignment to this bank of $2,170, at the completion of the contract.

Shortly after the execution of the above assignments the Hofman Company became financially embarrassed and on November 8, 1913, the company notified its creditors that a petition for voluntary dissolution had been filed in New York and that G. Albert Taylor had been appointed temporary receiver. On December 26th, following, the company was adjudged a bankrupt and Mr. Taylor subsequently was appointed trustee. On November 11, 1913, the Union Trust Company notified Woodward & Lothrop of its assignment from the Hofman Company and on November 14th, following, wrote Woodward & Lothrop that it might disregard the former notice and might make settlement "direct with the Receiver, G. Albert Taylor." The Central Bank first notified Woodward & Lothrop of its assignment from Hofman & Company on January 13, 1914. On the same day the Union Trust Company wrote Woodward & Lothrop requesting direct payment to the bank under its assignment.

Among the subcontractors of the Hofman Company was the Pittsburgh Plate Glass Company, and on the 27th of December, 1913, it filed in the court below its notice of lien in the sum of $3,286.53. On the 30th of December, following, an order was passed in the court below authorizing Woodward & Lothrop to pay into the registry of the court "the sum of $3,286.53, the amount of the claim of the lienor in these proceedings, together with the sum of two hundred dollars to cover interest and costs," the order further reciting that "upon the payment of said moneys into the court in accordance with the terms of section 1254 of the Code, the property shall be released, and the money so paid shall be subject to the final decree of the court." On January 21, 1914, pursuant to the provisions of the Code the Pittsburgh Company filed its bill of complaint in the court below to enforce the lien theretofore asserted. Service was made on the Hofman Company by publication and by notice to their last known place of residence in Rochester. Woodward & Lothrop made answer stating, among other things, that it was without knowledge of the terms of the contract alleged to have been entered into between the Hofman Company and the Pittsburgh Plate Glass Company, claimed that certain adjustments would be necessary owing to defective work by the Hofman Company, and directed attention to the deposit it had made and to the bankruptcy of the Hofman Company. On February 4, 1915, about a year after the filing of its bill, the court entered a decree confirming the lien of the plaintiff, the Pittsburgh Plate Glass Company, in the amount claimed and directing that amount to be paid plaintiff or its attorney of record from the sum deposited in court, which payment thereupon was made.

Numerous other subcontractors of the Hofman Company filed notice of liens during December of 1913, and January of 1914, and on April 20, 1914, the Garden City

Plating & Mfg. Company, one of these lienors, filed a bill for the enforcement of its lien against Woodward & Lothrop and the Hofman Company, and also naming the other lienors, including the Pittsburgh Plate Glass Company, as defendants. In that bill were detailed the proceedings culminating in the decree in favor of the Pittsburgh Plate Glass Company.

On October 26, 1915, a decree pro confesso was taken against the Hofman Company and on November 10th, following, this decree was set aside on motion of counsel for the Hofman Company. On the same day the Hofman Company and the two banks, by leave of court, filed intervening petitions in the suit of the Garden City Company, one of the banks claiming $9,280 and the other $2,170 under the assignments already mentioned. Leave to file a similar petition also was sought and obtained by the Trustee in Bankruptcy of the Hofman Company, but no petition was filed.

While the record does not definitely disclose who then represented the banks, it is fair to assume that the counsel who obtained the setting aside of the pro confesso decree and thereby laid the foundation for the filing of the intervening petitions by the banks also represented them. This inference is supported by the fact that since that time he has represented the banks. The intervening petitions of the two banks are silent as to the averments in the main petition concerning the suit of the Pittsburgh Plate Glass Company, the allegation being merely that the claims of the intervenors are paramount to those of the plaintiff or of any of the defendants. The cause was referred to a Special Master to report findings of fact and conclusions of law. At the first session before the Special Master on November 15, 1915, which it will be observed was subsequent to the filing of the intervening petitions,

it was stipulated between counsel for Woodward & Lothrop and counsel for the lienors that the balance due from Woodward & Lothrop to the Hofman Company was $6,013.60, and that no claim would be made against Woodward & Lothrop for any sum in excess of the amount admitted to be due. Hearings were had before the Special Master and on September 30, 1918, his report was filed. The Master found that the furnishings supplied under the Hofman contract by the various subcontractors, asserting their claims in the proceedings, were not affixed to the realty and hence were not fixtures within the meaning of the mechanics' lien statute. He further found that the loans of the two banks were made in good faith and that the assignments were not affected by the bankruptcy proceedings, "that the payment into court in the Mechanics' Lien case of the Pittsburgh Plate Glass Company to discharge an alleged lien which would have been a cloud upon the title of the said Woodward & Lothrop, Incorporated, having been paid by order of the court to the alleged lienor, Woodward & Lothrop, Incorporated, are not bound to pay the money over again." The Master further observed that "the assignees can not complain of this result because their failure to give notice of their assignments to Woodward & Lothrop would be sufficient to protect the latter in making any lawful payment out of the fund." The Master accordingly found the amount due from Woodward & Lothrop to be the amount stipulated on November 15, 1915. The record does not disclose that any claim was made for interest. To this report the bank filed exceptions, claiming that Woodward & Lothrop was not entitled to credit for the money paid into court in the Pittsburgh Plate Glass Company's suit, and that interest should have been allowed on the balance due from Woodward & Lothrop on Decem-

ber 30, 1913. The first of these exceptions was sustained and the second overruled. Accordingly, Woodward & Lothrop appealed from the first and the banks appealed from the second ruling.

We will first consider the appeal of Woodward & Lothrop. Under the provisions of Sec. 1239 of the Code a subcontractor is entitled to a mechanics' lien, and that lien is declared by Sec. 1245 to be superior "to all judgments, mortgages, deeds of trust, liens, and incumbrances which attach upon the building or ground affected by said lien subsequently to the commencement of the work upon the building," etc. This lien must be enforced by a bill in equity (Sec. 1246). Under Sec. 1254, when such a suit has been filed the owner of the building affected "may be allowed to pay into court the amount claimed by the lienor, and such additional amount, to cover interest and costs, as the court may direct," or he may file a written undertaking, with sureties to be approved by the court after notice to the defendant. "On the payment of said money into court, or the approval of such undertaking, the property shall be released from such lien, and any money so paid in shall be subject to the final decree of the court." Section 1255 provides that a similar undertaking may be offered before any suit is brought. The contention of counsel for the appellee banks is that the payment into court by Woodward & Lothrop, having been made before the suit of the Pittsburgh Plate Glass Company was filed, was unauthorized by statute.

The evident purpose of Sections 1254 and 1255 is to enable the owner, against whose building or fixtures a lien has been asserted, to be relieved of the embarrassment of the lien through the payment into the court of a sum equal to the amount of the lien with interest and costs, or the filing of an undertaking to cover that

amount. Where admittedly an amount is due the principal contractor and the lien is asserted by a subcontractor, there is no contest between the owner and the subcontractor, the issue being restricted to the contractor and the subcontractor. If the owner does not take advantage of these provisions of the Code for the release of the lien, the statute imposes upon him no duty to notify the contractor of the pendency of the subcontractor's suit. In the present case, had Woodward & Lothrop failed to take advantage of the provisions of either of these sections of the Code, the result would have been exactly the same, for after the Pittsburgh Company had obtained a final decree confirming its lien Woodward & Lothrop would have been fully protected in satisfying that decree. How, then, were the banks prejudiced in any way by what actually was done? The Pittsburgh Company had asserted its lien, the court authorized the payment into its registry of the amount claimed, and when the suit was filed that amount was in court, where it was treated as a deposit under the statute, and from that time on exactly the same procedure was followed as though the filing of the suit had preceded the deposit. In substance and effect there was a compliance with the terms of the statute. To hold otherwise would be to prefer form to substance and impose upon the owner a duty not contemplated by the statute. It will be observed that no notice is required under Sec. 1254, where a money payment is made by the owner, the theory evidently being that cash speaks for itself and that no one possibly could be prejudiced by the substitution of cash for the obligation of the owner to pay the amount due under its contract. It was for this reason that Section 1255 makes no mention of a cash payment. The object of the filing of an undertaking is to release the property from the lien and to satisfy

the final decree. When the suit of the Pittsburgh Company was instituted, therefore, the court had a right to treat the payment of Woodward & Lothrop as a payment made on account of that suit. There the responsibility of Woodward & Lothrop ended, for money thus paid into court no longer is under the control of the owner but of the court.

Counsel for the banks contend that Woodward & Lothrop should have notified them of the suit of the Pittsburgh Plate Glass Company. It is significant, this being a proceeding in equity, that in their intervening petition the banks did not allege their lack of knowledge in this connection. Moreover, on December 12, 1913, the receiver of the Hofman Company in a letter to Woodward & Lothrop, announced its purpose to come to Washington on a day certain to "straighten out the tangle." To do this he was to interview "the attorneys acting for Hofman creditors." On January 14, 1914, after the receiver had been appointed trustee in bankruptcy, he notified Woodward & Lothrop that inasmuch as the banks "were the chief parties at interest," he would turn the facts in his possession over to them. It is inconceivable, in the circumstances, that these banks should have made no inquiry during the year intervening between the filing of the suit of the Pittsburgh Company and the decree under which its lien was confirmed and payment made out of the registry of the court in satisfaction of the decree. Such quiescence is not customary with banks. But, however that may be, Woodward & Lothrop owed them no duty in the premises. The suit was of record and their remedy, if any, must have been obtained therein.

Counsel assert that it should have been ruled in this proceeding that the asserted lien of the Pittsburgh Plate Glass Company was without foundation. That question was not before the court, having been finally adjudicated in another proceeding.

We will now consider the appeal of the two banks from the action of the court in disallowing interest. It is a general rule that interest is not recoverable where payment is prevented by the act of the creditor. Thompson *vs.* Boston & Maine R. R., 58 N. H., 524; Branthwait *vs.* Halsey, 9 N. J. L., 4; Bowman *vs.* Wilson, 12 Fed., 864. In the present case, it is insisted that Woodward & Lothrop might have paid the money into court by filing an intervening petition. It is apparent from the foregoing recital of the facts that the situation was decidedly complicated. Woodward & Lothrop claimed a very substantial allowance on account of poor work, and this allowance ultimately was made. That Woodward & Lothrop were endeavoring to avoid unnecessary delay and expense apparently was recognized by counsel for the lienors when, in November of 1915, they entered into a stipulation to the effect that no interest would be demanded. The banks then had intervened, and at no time prior to the filing of the report of the Special Master did they raise any question as to interest. Woodward & Lothrop were innocent parties and they have been compelled to incur a very considerable expense in protecting their interests. They at all times were ready to pay the amount they really owed, and the delay was through no fault of theirs. We think the court below was right in disallowing the claim to interest.

The decree in No. 3260 is reversed, with costs, and the cause remanded for a decree in conformity with this opinion. The decree in No. 3261 is affirmed, with costs.

No. 3260 *reversed.*

No. 3261 *affirmed.*

CHAS. H. ROBB,
Associate Justice.

Mr. Chief Justice Smyth is of the view that payment into court by an owner, being a statutory right, must be in strict conformity with the statute, and he therefore dissents from the opinion and decree of the court in appeal No. 3260. In appeal No. 3261, he is of the view that Woodward & Lothrop, having had the use of the balance due, should pay interest, and he therefore dissents from the opinion and decree of the court in that cause.

[Endorsed:] Nos. 3260 & 3261. Woodward and Lothrop, Inc., appellant, *vs.* Union Trust Co., of Rochester, New York, et al., and Union Trust Co., of Rochester, New York, et al., appellants, *vs.* Woodward & Lothrop, Inc. Opinion of the court per Mr. Justice Robb. Court of Appeals, District of Columbia. Filed Jan. 5, 1920. Henry W. Hodges, Clerk.

In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

JANUARY TERM, 1920.

No. 3260,

WOODWARD & LOTHROP, APPELLANT,

vs.

UNION TRUST COMPANY, OF ROCHESTER, AND CENTRAL BANK, OF ROCHESTER, APPELLEES,

and

No. 3261,

UNION TRUST COMPANY, OF ROCHESTER, AND CENTRAL BANK, OF ROCHESTER, APPELLANTS,

vs.

WOODWARD & LOTHROP, APPELLEE.

PETITION FOR REHEARING.

Now come the Union Trust Company, of Rochester, New York, and the Central Bank, of Rochester, New York, through their counsel, and respectfully pray the court to stay the issuance of its mandate in the above entitled causes, to vacate the judgments of this court entered therein, to allow a rehearing of the said appeals and to give reconsideration thereto, and, in support hereof, show:

I.

That the decision and judgment rendered by this court in Appeal No. 3260 deprives these petitioners,

the appellees therein, of their property and property rights, without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

That the following facts are conclusively established by the record and are not disputed by the appellant, to wit:

(*a*) That in September, 1913, the Hofman Company made a valid assignment to the petitioners, vesting in petitioners the absolute ownership of the balance due from Woodward & Lothrop to the Hoffman Company under the contract between them.

(*b*) That the Hofman Company made no other assignment of said balance, or of any part thereof, to any other party whomsoever.

(*c*) That none of the work done or materials furnished by the Hofman Company, or any of its subcontractors, under the contract with Woodward & Lothrop, was of the character for which the law gave a mechanic's lien. Woodward & Lothrop not only did not dipute this but contributed to its establishment in the cause.

(*d*) The sole basis for the allowance of the sum of $3,486.53, part of the said balance assigned to petitioners in September, 1913, as a credit against the amount due petitioners under their assignment, is the payment by Woodward & Lothrop, of said amount, in satisfaction of an alleged mechanic's lien, asserted by the Pittsburgh Plate Glass Company in the equity suit of Pittsburgh Plate Glass Company *vs.* John Hofman Company, and Woodward & Lothrop, No. 32,387, in equity.

(*e*) The filing of the notice of said alleged lien, the institution of the suit to enforce it, and the entry of the decree thereon *all* occurred *after* the assignment by the Hofman Company to the petitioners.

(*f*) Neither of the petitioners was a party to said mechanic's lien proceeding of the Pittsburgh Plate Glass Company. Neither was served with process

therein; both were non-residents of this District; neither was proceeded against by publication; neither ever appeared therein nor took any part therein.

It is respectfully submitted that the record of the said proceedings by the Pittsburgh Plate Glass Company and every part thereof are inadmissible against these petitioners, constitute a *res inter alios acta*, as to these petitioners, and to receive the same in evidence and give them effect so as to defeat petitioners' title to the sum of $3,486.53, part of the sum assigned to them in September, 1913, and of the title to which they were then vested, deprives the petitioners of their property and property rights in violation of the Fifth Amendment to the Constitution.

Counsel for petitioners respectfully requests the court to consider, in connection with the foregoing proposition, the decisions of the Supreme Court of the United States, extracts from which follow.

That petitioners were not parties to said proceeding, were never served with process and never appeared is conclusively established by the record of the case which is in this record in full (Rec., pp. 43-51).

That they were not *in privity* with their assignor, the Hofman Company, in the proceeding, results from the fact that the assignment was made to them *before* any steps of any kind in said proceeding were *begun*.

In Keokuk & Western R. R. Co. *vs.* Missouri, 152 U. S., 301, Justice Brown, says (pp. 313-14):

> "*First.* There was no such privity of estate between the defendant in the suit, namely, the Missouri, Iowa and Nebraska Company, and the defendant in this suit as makes the judgment in that case *res judicata* in this. The mortgage of the Missouri, Iowa and Nebraska Railway Company, under the foreclosure of which this defendant purchased this road, was executed June 1, 1870, and neither the trustee under that mort-

gage, the Farmers' Loan and Trust Company, nor the bondholders, whom this mortgage secured, were parties to that action, which was begun in 1873, to recover the taxes of 1872. While a mortgagee is privy in estate with a mortgagor as to actions begun *before* the mortgage was given, *he is not bound by judgments or decrees against the mortgagor in suits begun by third parties subsequent to the execution of the mortgage*, unless he or some one authorized to represent him, like the trustee of a mortgage bondholder, is made party to the litigation, although it would be otherwise if the mortgage were executed pending the suit or after the decree."

In Dull *vs.* Blackman, 169 U. S., 243, Justice Brewer, says (p. 248):

"We remark again that while a judgment or decree binds not merely the party or parties subject to the jurisdiction of the court but also those in privity with them, yet *that rule does not avail the plaintiffs in error*, for Phelan acquired his rights *prior* to the institution of the suit in New York and was *therefore not privy to that judgment.*

'It is well understood, though not usually stated in express terms in works upon the subject, *that no one is privy to a judgment whose succession to the rights of property thereby affected, occurred previously to the institution of the suit.* A tenant in possession prior to the commencement of an action of ejectment can not therefore be lawfully dispossessed by the judgment unless made a party to the suit. . . . No grantee can be bound by any judgment in an action commenced against his grantor subsequent to the grant, otherwise a man having no interest in property could defeat the estate of the true owner. The foreclosure of a mortgage, *or of any other lien, is wholly inoperative upon the rights of any person not a party to the suit*, whether such person is a grantee, judgment creditor, attachment creditor, or other

lienholder.' Freeman on Judgments (1st Ed.), Sec. 162.

"As Phelan was not brought within the jurisdiction of the New York Court, and as the suit in that court was instituted nearly two months *after* he had acquired full title to the real estate, the decree of that court *did not bind him as a party, nor bind him as in privity with Blackman, his grantor.*"

In Old Colony Trust Co. *vs.* Omaha, 230 U. S., 100, Justice Van Devanter says (p. 122):

"A prior suit by the Electric Company against the city, largely but not entirely like the present, resulted in a decree against the Electric Company. The city now takes the position that that decree is conclusive upon the Trust Company as mortgagee. But the law is otherwise. The Trust Company's rights, and those of the bondholders whom it represents, *were not acquired during or since that suit but long prior thereto*, and the Trust Company was not a party to it. This being so, the Trust Company *is free to maintain the present suit, unembarrassed by the decree in the other.* Keokuk & Western Railroad Co. *vs.* Missouri, 152 U. S., 301, 313; Louisville Trust Co. *vs.* Cincinnati, 76 Fed. Rep., 296."

So, in the recent case of Postal Telegraph Cable Co. *vs.* Newport, 247 U. S., 464, decided in June, 1918, Mr. Justice Pitney says (pp. 274-5):

"There remains only the adjudication in the former suit against the first New York Company, which we assume to have been sufficiently pleaded, and to have substantially involved the points that are now material so as to make them *res judicata* in a subsequent suit between the parties and their privies although based on a different demand (Cromwell *vs.* County of Sac, 94 U. S., 351, 352; Wilson's Executor *vs.* Deen, 121 U. S., 525, 534; Nesbit *vs.* Riverside Independent Dis-

trict, 144 U. S., 610), and which the court of appeals regarded as concluding defendant upon matters of fact as well as law. But there is nothing in the record to make this judgment conclusive as against defendant except upon the theory of a privity of estate between it and the first New York Company. And, as to this, it appears from the averments in defendant's pleadings—indeed, it is stated as a fact in the opinion of the court—that the suit against that company was brought in the year 1899, *two years after it had conveyed its property in the State of Kentucky*, including all its rights and interests in the city of Newport, to another corporation through which defendant afterwards acquired title.

"The ground upon which, and upon which alone, a judgment against a prior owner is held conclusive against his successor in interest, is that the estoppel runs with the property, that the grantor can transfer no better right or title than he himself has, and that the grantee takes *cum onere*. *From this it follows that nothing which the grantor can do or suffer after he has parted with the title can affect rights previously vested in the grantee, for there is no longer privity between them. This doctrine is universally accepted*, and was applied by this court in Keokuk & Western R. R. Co. *vs.* Missouri, 152 U. S., 301, 314; Keokuk & Western R. R. *vs.* Scotland County, 152 U. S., 318, 322; Dull *vs.* Blackman, 169 U. S., 243, 248; Old Colony Trust Co. *vs.* Omaha, 230 U. S., 100, 122."

From a passage in this court's opinion it would seem that this court was mislead, by a letter of the trustee in bankruptcy, written January 14, 1914 (Rec., p. 41), and therefrom concluded that the petitioners knew or ought to have known of the payment into court by Woodward & Lothrop and the bringing of the suit by the Pittsburgh Plate Glass Company. This inference, it will be seen, from the contents of the letter is not

deducible. The trustee is writing from Rochester, after his return from Washington, and is referring to the information he received in an interview with Mr. Everett "*on the 7th inst.*," that is a week *before* writing the letter. The money *had not then been paid into court* and was not so paid in until the *tenth* of January (Rec., p. 25), three days *after* the trustee's interview, and the suit was not filed till the *twenty-first* of January, a week *after* the trustee's letter. He could not, therefore, have communicated either of those facts to the petitioners because he did not know either of them, and if he had learned of the order *authorizing* the payment into court he would have seen, on its face, that it only authorized payment, under Sec. 1254 of the Code *after suit brought.*

Moreover, no material facts can be assumed, if not shown by the record, because the certificate of the judge to the statement of evidence, approved by counsel for both appellant and appellees (Rec., p. 58), says that (Rec., p. 37), "the following is the substance of the evidence before the master pertinent to the said exceptions."

But even if knowledge of all those proceedings could be rightfully imputed to petitioners, the Supreme Court of the United States has several times held that such knowledge does not constitute privity nor make the judgment admissible. Thus in Stryker *vs.* Goodnow, 123 U. S., 527, Chief Justice Waite says (p. 540):

> "We have not overlooked the fact that a *brief was filed at the hearing in this court on behalf of the Railroad Company* to support the claim of Wolcott that the title of that company was the best. Such a proceeding *did not make the Railroad Company a party to the suit, or bind it by the decree.* Being interested in the question to be decided, the company was anxious to secure a judgment that could not be used as a precedent against its own claims in any litigation that might

> thereafter arise in respect to its own property. It is not an uncommon thing in this court to allow briefs to be presented by or on behalf of persons who are not parties to the suit, but who are interested in the questions to be decided, *and it has never been supposed that the judgment in such a case would estop the intervenor in a suit of his own which presented the same questions.*"

In Brandon *vs.* Ard, 211 U. S., 11, Justice Harlan says (pp. 23-24):

> "Ard was not, in any legal sense, a privy to the issue of record between the United States and its opponents, although the validity of the patent received by the Missouri-Kansas Company for the land here in question—under which company the present plaintiffs in error claim—was directly disputed by the Government in that case. It is said that Ard *was an active member of the Settlers' Protective Association.* But that is not a controlling fact. *It may be, as alleged,* that, in respect of the patents issued to it, *the Government was induced to proceed against that company by the representations made and the facts brought to its attention by that association. But that circumstance did not so connect the association with the suit as to make the judgment binding upon its individual members in a suit between other parties.*"

In Bigelow *vs.* Old Dominion Copper Co., 225 U. S., 111, Justice Lurton says (p. 126):

> "To conclude Biegelow by the New York judgment, *it must appear that he was either a party or a privy.* That he was not a party to the record is conceded. He had no legal right to defend or control the proceedings, nor to appeal from the decree. He was, therefore, a stranger, and was not concluded by that judgment as a party thereto. That he was indirectly interested in the result because the question there litigated was one which might affect his own liability as a

judicial precedent in a subsequent suit against him upon the same cause of action is true, but the effect of a judgment against Lewisohn as a precedent is not that of *res judicata*, and the Massachusetts court was under no obligation to follow the decision as a mere judicial precedent. *Nor would assistance in the defense of the suit, because of interest in the decision as a judicial precedent which might influence the decision in his own case, create an estoppel as to Bigelow.* Stryker *vs.* Goodnow, 123 U. S., 527; also, Rumford Chem. Works *vs.* Hygienic Chem. Co., 215 U. S., 156."

Finally, the Supreme Court of the United States has decided that to give effect to a proceeding, as evidence or otherwise, against one who was neither a party nor privy to it, deprives that one of property without due process of law and violates a fundamental right guaranteed by the Constitution. This was ruled in the above cited case of Postal Telegraph Cable Co. *vs.* Newport, 247 U. S., 464 (decided June 10, 1918), in which Mr. Justice Pitney says (pp. 475-6):

"Waiving the doubt whether, under the particular facts of this case, the question of *res judicata* can be regarded as independent of the federal questions that were raised, we are of the opinion that the decision reached upon *it is so clearly ill founded that it can not sustain the judgment*; and this for the reason that it *is inconsistent with another federal right of defendant, fundamental in character.*

"The doctrine of *res judicata* rests at bottom upon the ground that the party to be affected, or some other with whom he is in privity, has litigated or had an opportunity to litigate the same matter in a former action in a court of competent jurisdiction. Southern Pacific R. R. Co. *vs.* United States, 168 U. S., 1, 48; Greenleaf Ev., secs. 522-523. *The opportunity to be heard is an essential requisite of due process of law in*

judicial proceedings. Windsor *vs.* McVeigh, 93 U. S., 274, 277; Louisville & Nashville R. R. Co. *vs.* Schmidt, 177 U. S., 230, 236; Simon *vs.* Craft, 182 U. S., 427, 436. And as a State may not, consistently with the Fourteenth Amendment, enforce a judgment against a party named in the proceedings without a hearing or an opportunity to be heard (Pennoyer *vs.* Neff, 95 U. S., 714, 733; Scott *vs.* McNeal, 154 U. S., 34, 46; Coe *vs.* Armour Fertilizer Works, 237 U. S., 413, 423), *so it can not, without disregarding the requirement of due process, give a conclusive effect to a prior judgment against one who is neither a party nor in privity with a party therein.*"

II.

With regard to the judgment in No. 3261, it is, with respectful deference, suggested to the court that in addition to the outstanding fact that Woodward & Lothrop has had the use of the furniture since September, 1913, and during the same time, the use in its business, of the admitted balance of $6,013.60, due for the manufacture of that furniture, certain other facts, shown by the record, should weigh strongly to require the payment of interest.

On November 15, 1915, Woodward & Lothrop admitted a balance in its hands over and above all counterclaims by it, of $6,013.60. To this balance it made no claim whatever (Rec., p. 57). Yet it did not pay this sum into court nor offer to do so, nor did it offer to pay any part of it to petitioners, but retained it and used it in its business.

On September 30, 1918, the special master's report was filed, confirming Woodward & Lothrop's admission of a balance of $6,013.60 (Rec., p. 30), but still it retained and used this balance.

On January 17, 1919, the final decree in this case was entered in the court below (Rec., pp. 32-33), yet it did not pay or offer to pay any part of the admitted balance to petitioners or into court, but superseded the *entire* decree (Rec., p. 33) and retained the use of said balance in its business.

On December 30, 1913, when it voluntarily applied for and obtained the order authorizing it to pay into court the amount claimed by the Pittsburgh Plate Glass Company, there were then of record five other notices of lien, aggregating $2,074.68, all but one of which were filed *before* that of the Pittsburgh Plate Glass Company, and that one was filed on the same day as the Pittsburgh Plate Glass Company's. Yet Woodward & Lothrop did not obtain an order to pay into court anything for the release of those other liens, but specially favored the Pittsburgh Plate Glass Company with that payment, retaining all the rest of th fund for use in its own business.

It is respectfully submitted that this course of conduct did not show a willingness to pay what was due, but a willingness to retain it, for use in its business, throughout the litigation, and to apply it among the claimants as it saw fit. In the meantime, all the costs of the proceeding, aggregating $545.17, were, by the special master, charged upon the fund (Rec., p. 30), and in consequence fall on the petitioners.

The record shows that these petitioners, banking institutions whose business is lending money at interest, lent this money to the Hofman Company, in aid of industry, in September, 1913, while the Hofman Company was struggling to complete the contract for Woodward & Lothrop (Rec., p. 26). The furniture was thereafter completed and delivered to Woodward & Lothrop between September

and November or the first of December, and Woodward & Lothrop has been in undisturbed enjoyment of the furniture and money ever since.

Respectfully submitted.

UNION TRUST COMPANY OF ROCHESTER,
CENTRAL BANK OF ROCHESTER,
Petitioners,
By WM. G. JOHNSON,
Their Counsel.

SATURDAY, JANUARY 31st, A. D. 1920.

No. 3260.

WOODWARD AND LOTHROP, INCORPORATED, APPELLANT,

vs.

UNION TRUST COMPANY, OF ROCHESTER, NEW YORK, ET AL.

and

No. 3261.

UNION TRUST COMPANY, OF ROCHESTER, NEW YORK, ET AL., APPELLANTS,

vs.

WOODWARD AND LOTHROP, INCORPORATED.

On consideration of the petition for a rehearing in the above entitled causes, it is by the court this day ordered that said petition be, and the same is hereby, denied.

IN THE

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

January Term, 1920.

No. 3260.

WOODWARD & LOTHROP, APPELLANT,

vs.

UNION TRUST COMPANY, OF ROCHESTER, NEW YORK,

and

CENTRAL BANK, OF ROCHESTER, NEW YORK,

APPELLEES.

Come now the above named appellees and move the court to allow an appeal to the Supreme Court of the United States from the judgment and decree of this court entered herein on the fifth day of January, A. D.

1920, and to fix the amount of the security for costs on such appeal, and for ground of said motion show:

That the said judgment is a final judgment in a case wherein the amount in controversy exceeds $3,000, and involving the construction or application of the Constitution of the United States, to wit, the Fifth Amendment thereto, within the true intent and meaning of the third clause of section 250 of the act of Congress approved March 3, 1911 (36 Stat., 1159), known as the Judicial Code.

UNION TRUST COMPANY, OF ROCHESTER, NEW YORK,
CENTRAL BANK, OF ROCHESTER, NEW YORK,
By WM. G. JOHNSON, *Their Counsel.*

[Endorsed:] No. 3260. Woodward & Lothrop, appellant, *vs.* Union Trust Company, of Rochester, New York, et al. Appeal to Supreme Court of the United States. Court of Appeals, District of Columbia. Filed Jan. 31, 1920. Henry W. Hodges, Clerk.

SATURDAY, JANUARY 31st, A. D. 1920.

No. 3260.

WOODWARD AND LOTHROP, INCORPORATED, APPELLANT,

vs.

UNION TRUST COMPANY, OF ROCHESTER, NEW YORK, et al.

On consideration of the motion for the allowance of an appeal to the Supreme Court of the United States in the above entitled cause, it is by the court this day ordered that said motion be, and the same is hereby, denied.

PAGES MISN

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 25, inclusive, constitute a true copy of the opinion of said court, the petition for rehearing and the order denying same, and the motion for the allowance of an appeal to the Supreme Court of the United States, and the order denying same in the cases of Woodward and Lothrop, Incorporated, appellant, *vs.* Union Trust Company, of Rochester, New York, and Central Bank, of Rochester, New York, corporations, Intervenors, and Union Trust Company, of Rochester, New York, and Central Bank, of Rochester, New York, corporations, Intervenors, appellants, *vs.* Woodward and Lothrop, Incorporated. Nos. 3260 and 3261, January Term, 1920, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 3rd day of February, A. D. 1920.

[Seal.] HENRY W. HODGES,
Clerk of the Court of Appeals
of the District of Columbia.

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IN THE

Supreme Court of the United States.

IN RE PETITION OF JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF HERMAN A. RISTOW, DECEASED, FOR WRIT OF PROHIBITION AND WRIT OF MANDAMUS.

Motion for Leave to File Petition.

HARRY W. STANDIDGE,
PROCTOR.

BARNARD & MILLER PRINT, CHICAGO.

IN THE

Supreme Court of the United States,

IN RE PETITION OF JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF HERMAN A. RISTOW, DECEASED, FOR WRIT OF PROHIBITION AND WRIT OF MANDAMUS.

MOTION FOR LEAVE TO FILE PETITION.

And now comes James F. Bishop, Administrator of the Estate of Herman A. Ristow, Deceased, and moves the court for leave to file petition for a Writ of Prohibition and Writ of Mandamus, which petition is presented to the court herewith.

JAMES F. BISHOP,
Administrator of the Estate of
Herman A. Ristow, Deceased.

HARRY W. STANDIDGE,
Proctor for James F. Bishop, Administrator
of the Estate of Herman A. Ristow, Deceased.

IN THE

Supreme Court of the United States.

IN RE PETITION OF JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF HERMAN A. RISTOW, DECEASED, FOR WRIT OF PROHIBITION AND WRIT OF MANDAMUS.

Brief in Support of Motion to File Petition.

HARRY W. STANDIDGE,
PROCTOR.

BARNARD & MILLER PRINT, CHICAGO.

IN THE

Supreme Court of the United States,

IN RE PETITION OF JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF HERMAN A. RISTOW, DECEASED, FOR WRIT OF PROHIBITION AND WRIT OF MANDAMUS.

BRIEF IN SUPPORT OF MOTION TO FILE PETITION.

STATEMENT OF THE CASE.

In the limitation proceeding filed in the District Court of the United States for the Northern District of Illinois, Eastern Division, by the St. Joseph-Chicago Steamship Company, to limit its liability for damages caused by the tipping over of the steamer Eastland beside its dock in the Chicago River, there is an alleged limited liability fund of $41,598.41, arising from the proceeds of the sale of parts of said steamer which the Great Lakes Towing Company raised, and also parts of said steamer and its equipment, which, while floating down the river, were salved by one Walter Scott.

The value of said property so salved by said Scott, as set forth in a sworn petition filed by him in said limitation proceeding, is $8,214.77, and said Great Lakes Towing Company admitted the allegations of said petition to be true by failing to comply with a rule of court to plead to same.

The District Court has entered a decree directing immediate payment to said Great Lakes Towing Company of $41,883.98 out of said alleged limited liability fund of $41,598.41, said claim of said Great Lakes Towing Company being based on a contract made by it with said St. Joseph-Chicago Steamship Company for the raising of said steamer three days after it tipped over, such payment to be made forthwith unless life salvors who claim a "fair share" thereof shall file a bond for $2,500 within fifteen days after the entry of said decree.

The petition for limitation stands for hearing upon an answer filed thereto by the petitioner herein, denying the alleged right of limitation therein prayed for, and upon exceptions filed by other claimants to said petition, the questions as to the alleged right of said St. Joseph-Chicago Steamship Company to said limitation of liability which it prays for, and its alleged right to have made permanent the temporary injunction issued restraining petitioner and all other limited liability claimants from prosecuting other proceedings to enforce full liability, have not been determined, and until such questions shall be determined, petitioner herein, and all other limited liability claimants, cannot have their rights adjudicated in said limitation proceeding, or in any other proceeding or proceedings.

Petitioner contends that in said limitation proceeding he and all other claimants are entitled to have their rights adjudicated in accordance with Admiralty Rule 55, and otherwise as provided by law, namely, the questions as to said alleged rights of said St. Joseph-Chicago Steamship Company to the limitation of liability, and the permanent injunction restraining other proceedings against it, which it prays for, must first be determined, and then, if such alleged rights shall be granted, all claims must be passed upon, and "after payment of costs and expenses," the fund must be distributed, by final decree, from which final decree any and all parties may appeal, and in said present state of the record said District Court has no jurisdiction to enter the decree complained of, ordering the immediate payment to said Great Lakes Towing Company, upon its said claim based on said contract made with said St. Joseph-Chicago Steamship Company, of all of said alleged limited liability fund, consisting of the proceeds both of said property raised by said Great Lakes Towing Company, and said property salved by said Scott, under procedure contrary to said Admiralty Rule 55, and otherwise contrary to law.

Petitioner therefore asks leave to file a petition for writs of prohibition and mandamus to prevent the carrying out of, and to have set aside, said order and decree providing for such immediate payment.

BRIEF.

I.

THE WRITS OF PROHIBITION AND MANDAMUS SHOULD ISSUE WHEN A DISTRICT COURT IS PROCEEDING CONTRARY TO THE PROCEDURE PRESCRIBED BY THE ADMIRALTY RULES OF THIS COURT.

Ex Parte Slayton, 105 U. S. 451.

Ex Parte Slater, 246 U. S. 128, 133.

II.

THE DISTRICT COURT ACTED WITHOUT JURISDICTION IN ENTERING THE DECREE COMPLAINED OF.

Denny v. *Bennett*, 128 U. S. 489.

Gilchrist v. *Chicago Ins. Co.*, 104 Fed. 566, 573.

Mather Humane Stock Trans. Co. v. *Anderson, et al.*, 76 Fed. 164.

Security Trust Co. v. *Sullivan*, 77 Fed. 778.

Montgomery et al., Claimants of Steamer Republic, v. *Anderson, et al.*, 21 How. (62 U. S.) 386.

The La Bourgogne, 210 U. S. 95.

The J. Doherty, 207 Fed. 997, 1000-1001.

Great Lakes Towing Co. v. *Mill Trans. Co.*, 155 Fed. 11.

Emerson v. *The Pandora*, Fed. Cas. No. 4442.

ARGUMENT.

I.

THE WRITS OF PROHIBITION AND MANDAMUS SHOULD ISSUE WHEN A DISTRICT COURT IS PROCEEDING CONTRARY TO THE PROCEDURE PRESCRIBED BY THE ADMIRALTY RULES OF THIS COURT.

All parties, and all District Courts, are bound by the rules prescribed by this court. Petitioner is bound by such rules, and is entitled to the protection of having all other parties and said District Court bound thereby in said limitation proceeding in question. No party has a right, and no court has jurisdiction, to violate such rules, and this court has the right to and will, issue writs of prohibition and mandamus to prevent the violation of, and enforce compliance with, said rules.

In the limitation proceeding in question herein, under said limitation law and said Admiralty Rules, petitioner is restrained from having a hearing on his said claim for damages in any other proceeding, and cannot have a hearing thereon in said limitation proceeding until said alleged right of limitation therein has been determined, and, if such limitation shall be granted, then, under said limitation law and Admiralty Rule 55, he is entitled to have all other rights of all parties adjudicated, and "after payment of costs and expenses," have a distribution of

the limited liability fund, by a final decree, and the action of the District Court in ordering said fund distributed by the payment of said entire fund to said Great Lakes Towing Company in the present state of the record, is in violation of said law and said Admiralty Rule 55, and without jurisdiction and contrary to law.

In *Ex parte* Slayton, 105 U. S. 451, which involved procedure in a limitation proceeding, this court held that the procedure therein complained of was in accordance with law and was not covered by, and was not in violation of, the Admiralty Rules therein referred to which govern such a proceeding, and stated that the court is not called upon to direct, by a writ of prohibition, who the parties are to whom a fund shall be distributed.

In the case at bar, petitioner is not asking this court to make any direction as to what parties the alleged limited liability fund in question herein shall be distributed to. Petitioner is asking that it shall not be distributed otherwise than in accordance with said limited liability law and said Admiralty Rule 55.

In *Ex parte* Slater, 246 U. S. 128, 133, the action complained of was held to be in accordance with rules of court, and therefore in accordance with law, and under the principles laid down therein and in other cases, mandamus will issue to compel compliance with rules of this court and with law.

II.

THE DISTRICT COURT ACTED WITHOUT JURISDICTION IN ENTERING THE DECREE COMPLAINED OF.

In addition to the reasons stated under Point I, the District Court also acted without jurisdiction in entering the decree complained of for the following reasons:

In the case at bar said limitation law, and all other laws, and said Admiralty Rules, were a part of said contract on which said Great Lakes Towing Company bases its said claim.

Denny v. *Bennett*, 128 U. S. 489.

In *Gilchrist* v. *Chgo. Ins. Co.*, 104 Fed. 566, and authorities cited therein, it is held that an abandonment of a steamer after a disaster confers ownership upon the parties to whom it is abandoned as of the time of said disaster, and in that case certain underwriters to whom the steamer in question therein had been abandoned after it had met with disaster, were held liable for services rendered to said steamer, as owners thereof from the time of said disaster thereto, although the party abandoning same made a contract for such services before said abandonment.

In the case at bar, if the alleged abandonment of the steamer Eastland to petitioner and other limited liability claimants was a valid abandonment and transferred ownership to them as of the time immediately after said steamer tipped over, and said Great Lakes Towing Company therefore had a valid claim for the services which it rendered against them

as such owners, then said District Court, by the decree in question, unconstitutionally and without jurisdiction, has deprived petitioner and said other claimants of their property without due process of law, for said Great Lakes Towing Company has never filed, and petitioners and said other claimants have never had an opportunity to defend against, any such claim.

The decree of the District Court which denied the prayers of the petition and motion for "a preferred, paramount and first lien on said steamer or the proceeds thereof," (see petition, pp. 5, 18, 21-22), was not a final order, and the Court of Appeals had no jurisdiction of the appeal from said decree.

Mather Humane Stock Trans. Co. v. *Anderson, et al.*, 76 Fed. 164.

Security Trust Co. v. *Sullivan*, 77 Fed. 778.

Montgomery et al., Claimants of Steamer Republic, v. *Anderson, et al.*, 21 How. (62 U. S.) 386.

The La Bourgogne, 210 U. S. 95.

In the Montgomery case, *supra* (pp. 387-8), the court said:

> * * * "*under the Act of Congress, no appeal would lie from the District to the Circuit Court until there was a final decree upon the whole case—that is, not until all the claims on the money in the registry had been ascertained and adjusted, and the whole amount of the proceeds of the sale of the vessel distributed, by the decree, among the parties which the District Court deemed to be entitled, according to their respective priorities and rights.*
>
> *The Circuit Court, therefore, had no jurisdiction of the case, as it came before them; and their judgment affirming the decree, was erro-*

neous on that ground. The appeal ought to have been dismissed for want of jurisdiction. This point was directly decided in this court, in the case of Mordecai and others v. *Lindsay and others* (19 How. 200)."

The contract on which said Great Lakes Towing Company bases its claims does not provide for, and said company is not entitled to, a lien upon said steamer, or any part thereof.

The J. Doherty, 207 Fed. 997, 1000-1001.

Great Lakes Towing Co. v. *Mill Trans. Co.*, 155 Fed. 11.

Said decree of the District Court which denied to said Great Lakes Towing Company "a preferred, paramount and first lien on said steamer or the proceeds thereof," also was a proper order, as said company could not have had such a lien for the reason that if it had a lien on the entire steamer or its proceeds, it did not have "a preferred, paramount and first lien," for Mr. Scott also had a lien thereon. Undoubtedly, however, said Scott did not have a lien upon the property raised by said Great Lakes Towing Company, and the latter did not have a lien upon said property salved by said Scott, and the court has no jurisdiction to award to said Great Lakes Towing Company proceeds of said property salved by said Scott.

In *Emerson* v. *The Pandora*, Fed. Cas. No. 4442, party towing burning craft across river and carrying away rigging, was held to have salvage claim only against rigging, which could not be enforced under libel claiming lien against craft and cargo.

In any event, said order of the District Court de-

nying to said Great Lakes Towing Company "a preferred, paramount and first lien on said steamer or the proceeds thereof," was a proper order, the mandate of the Court of Appeals does not direct that said company be allowed such a lien, and said District Court has no jurisdiction to grant same, has no jurisdiction to order paid to said company any of the proceeds of said property salved by said Scott, and has no jurisdiction to enter judgment on said claim of said company with interest, and then allow interest on interest by decreeing the payment of interest thereon.

Petitioner therefore respectfully prays that his motion for leave to file said petition be granted.

Respectfully submitted,

HARRY W. STANDIDGE,
Proctor.

Minnesota State Library.

IN THE

Supreme Court of the United States.

IN RE PETITION OF JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF HERMAN A. RISTOW, DECEASED, FOR WRIT OF PROHIBITION AND WRIT OF MANDAMUS.

PETITION.

HARRY W. STANDIDGE,
PROCTOR.

BARNARD & MILLER PRINT, CHICAGO.

IN THE

Supreme Court of the United States,

IN RE PETITION OF JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF HERMAN A. RISTOW, DECEASED, FOR WRIT OF PROHIBITION AND WRIT OF MANDAMUS.

MOTION FOR LEAVE TO FILE PETITION.

And now comes James F. Bishop, Administrator of the Estate of Herman A. Ristow, Deceased, and moves the court for leave to file the annexed petition.

JAMES F. BISHOP,
Administrator of the Estate of Herman A. Ristow, Deceased.

HARRY W. STANDIDGE,
Proctor for James F. Bishop, Administrator of the Estate of Herman A. Ristow, Deceased.

IN THE

SUPREME COURT OF THE UNITED STATES.

In re Petition of James F. Bishop, Administrator of the Estate of Herman A. Ristow, Deceased, for Writ of Prohibition and Writ of Mandamus.

PETITION FOR WRITS OF PROHIBITION AND MANDAMUS.

To the Honorable the Judges of the Supreme Court of the United States:

The petition of James F. Bishop, Administrator of the Estate of Herman A. Ristow, Deceased, on behalf of himself and all other aggrieved parties, against the Honorable George A. Carpenter, Judge of the District Court of the United States for the Northern District of Illinois, Eastern Division, sitting in Admiralty, respectfully represents:

1st. Petitioner James F. Bishop, is the duly appointed and qualified administrator of the estate of said Herman A. Ristow, deceased.

2d. Said Herman A. Ristow, deceased, lost his life while a passenger on the steamer Eastland, by reason of said steamer tipping over beside its dock in the Chicago River, in Chicago, Illinois, on July 24, 1915.

3d. On August 17, 1915, in the District Court of the United States for the Northern District of Illinois, Eastern Division, petitioner filed a proceeding in admiralty against said St. Joseph-Chicago Steamship Company and others, to recover damages for the death of said Herman A. Ristow, deceased.

4th. On August 17, 1915, said St. Joseph-Chicago Steamship Company, under Sections 4283, 4284 and 4285 of the U. S. Revised Statutes, and the various acts amendatory thereof and supplemental thereto, filed in said District Court a limitation proceeding to limit its liability caused by the tipping over of said steamer, and on August 19, 1915, abandoned or attempted to abandon, said steamer to petitioner and all other claimants in said limitation proceeding, by an alleged transfer of said steamer to a trustee appointed by the court in said limitation proceeding.

5th. On August 21, 1915, in said limitation proceeding, the court issued a monition and injunction restraining petitioner from the further prosecution of said proceeding theretofore brought by him to recover damages for the death of said Herman A. Ristow, deceased, and also restraining petitioner and all other claimants in said limitation proceeding from the prosecution of any and all other proceedings of any nature to enforce any liability covered by said limited liability statutes against said St. Joseph-Chicago Steamship Company and said steamer, and said injunction still remains in force and effect.

6th. On September 1, 1915, the Great Lakes Towing Company, filed in said limitation proceeding a petition and claim alleging that on July 27, 1915, it made a contract with said St. Joseph-Chicago Steamship Company to raise the steamer Eastland for $34,500, which contract was approved by underwriters for companies insuring said steamer, and that it had performed said contract, and praying that the court "will pronounce in favor of its claim and

will decree that it has a prefered, paramount and first lien upon said steamer Eastland which has been surrendered and transferred to a trustee in pursuance of said limitation proceedings," which petition, claim and contract are hereinafter set forth and made a part hereof.

7th. On November 18, 1915, petitioner filed an answer to said petition for limitation of liability, denying that said owner of said steamer was entitled to the limitation of liability prayed for.

8th. On November 23, 1915, in said limitation proceeding, said Walter Scott filed a sworn petition, setting forth that he saved and delivered to said steamer, parts of said steamer and its equipment of the value of $8,214.77, and praying to be awarded a reasonable allowance therefor, and all parties to said cause were ordered to plead to said petition within 10 days.

9th. Said Great Lakes Towing Company never complied with said rule to plead to said petition of said Scott, and thereby admitted the allegations of said petition to be true.

10th. On December 20, 1915, on petition of said Great Lakes Towing Company, and by order of court, in said limitation proceeding, said parts of said steamer which said Great Lakes Towing Company raised, and said parts of said steamer and its equipment which said Scott salved, were sold, the proceeds of said sale being $46,000.

11th. On January 3, 1916, over objection of petitioner and others, said sale was confirmed by the court.

12th. On January 3, 1916, also, said Great Lakes

Towing Company filed a written motion for payment of its said contractual claim of $34,500, which motion is hereinafter set forth and made a part hereof.

13th. On January 17, 1916, petitioner and other claimants filed exceptions to said petition of said Great Lakes Towing Company and objections to the allowance of its said claim, on the ground, among others, that the court was without jurisdiction to allow the payment of its said claim based on said contract made by it with said St. Joseph-Chicago Steamship Company, out of the funds derived from the sale of said steamer.

14th. On November 3, 1916, the court entered an order finding and holding only that "said Great Lakes Towing Company is not entitled to the relief prayed for by it in said petition and motion to have its said claim decreed a preferred, paramount and first lien on said steamer or the proceeds thereof, and it is ordered that said prayer of said petition and motion be and the same are hereby denied."

15th. Thereupon said Great Lakes Towing Company appealed from said order denying said prayer of its said petition and motion, to the United States Circuit Court of Appeals for the Seventh Circuit, and shortly thereafter petitioner and other claimants moved said Circuit Court of Appeals to dismiss said appeal on the ground that said order appealed from was not a final and appealable order.

16th. On July 23, 1918, said Court of Appeals denied said motion to dismiss said appeal, and reversed and remanded said decree of said District Court appealed from as aforesaid, and directed said District Court to allow appellant's claim with interest and costs.

17th. On November 19, 1918, said Court of Appeals amended its decree so that as amended it provided that "It is now here ordered, adjudged and decreed by this court that the decree of the said District Court in this cause be, and the same is hereby reversed with costs; and that this cause be, and the same is hereby remanded to the said District Court with direction to allow appellant's claim with costs and interest at the rate of five per cent from the date of filing of the claim of the appellant, Great Lakes Towing Company."

18th. On April 2, 1919, various parties, as alleged salvors of human lives, applied to the District Court for leave to file in said limitation proceeding, claims for a fair share of the remuneration awarded to the Great Lakes Towing Company as salvors of said steamer, under Section 3 of Chapter 265 of Volume 37 of the United Statutes at Large, which provides "That salvors of human life, who have taken part in the services rendered on the occasion of the accident giving rise to salvage, are entitled to a fair share of the remuneration awarded to the salvors of the vessel, her cargo and accessories."

19th. On April 7, 1919, said Great Lakes Towing Company filed in said District Court, the mandate of said Court of Appeals, issued in accordance with said amended decree of said court.

20th. On April 24, 1919, said District Court granted said motion of said life salvor claimants to file claims as aforesaid in said limitation proceeding, and thereupon said claimants filed their said claims therein.

21st. On May 12, 1919, said Great Lakes Towing

Company filed in said Circuit Court of Appeals a petition for mandamus against the Honorable Kenesaw M. Landis to compel him to enter a decree for the immediate payment to it of its said claim, and later filed a motion in said Court of Appeals to amend the mandate of said court so as to make it provide for the entry of an order for the immediate payment of said claim, and on July 1, 1919, said Court of Appeals denied said petition for mandamus and said motion to amend said mandate.

22d. On August 6, 1919, by agreement of all parties, said money in the registry of the court was invested in United States Victory Liberty Loan 4¾% bonds.

23d. On December 9, 1919, said District Court sustained exceptions filed by said Great Lakes Towing Company to said claims filed by said life salvor claimants, and gave leave to said claimants to file amended claims.

24th. On December 16, 1919, on motion of said life salvor claimants, said District Court entered an order, in accordance with the mandate of said Court of Appeals, providing that "It is ordered that the claim of the Great Lakes Towing Company for $34,500, with interest at five per cent from date of filing said claim for salving the steamer Eastland be and the same is hereby allowed, in accordance with the terms of said mandate, saving and reserving to the salvors of human life, who have heretofore filed their claims herein, the right to have their claims to a fair share thereof adjudicated."

25th. On December 23, 1919, said District Court entered said order and decree herein complained of,

sustaining exceptions to the amended claims of said life salvors and dismissing them, allowing said claim of said Great Lakes Towing Company for $41,883.98, with costs to be taxed, as "a first, preferred and paramount lien against the funds now in the registry of the court arising from the sale of the steamer Eastland," entering judgment in favor of said Great Lakes Towing Company for said sum of $41,883.98, with interest until paid at five per cent, and also for costs to be taxed, and directing the clerk of said court to pay to said Great Lakes Towing Company the amount of said judgment from said funds now in the registry of said court, unless bond for $2,500 should be filed by said life salvor claimants within 15 days, as will more fully appear by said decree hereinafter set forth and made a part of this petition.

26th. There are, and at the time of the entry of said decree on December 23, 1919, there were, pending in said limitation proceeding, petitioner's said death claim, and several hundred other death, personal injury and supply claims, upon which no hearing or adjudication has been had, and upon which no hearing can be had until the question as to the alleged right of said St. Joseph-Chicago Steamship Company to the limitation of liability which it prays for has been determined, and said injunction remains in force prohibiting action on said claims in any other proceedings.

27th. On December 23, 1919, the date of the entry of said order and decree complained of, there was in the registry of said District Court as an alleged limited liability fund in said limitation proceeding,

arising from the sale of said parts of said steamer which said Great Lakes Towing Company raised, and said parts of said steamer and its equipment which said Scott salved, as aforesaid, after the payment, with the consent of all parties, of $500 to said Scott as a reasonable allowance for salving property, admitted, as aforesaid, to be of the value of $8,214.77, and payment of a part of the costs and expenses theretofore incurred in said limitation proceeding, and after deducting the governmental fee of one per cent to be deducted for distribution of said fund, the sum of $41,598.41, which sum, by agreement of all parties, has been invested in United States Victory Liberty Loan 4¾% Bonds, as aforesaid.

28th. In this state of the record, with said sum of $41,598.41 in the registry of the court as an alleged limited liability fund, said District Court has ordered that $41,883.98, with interest at five per cent and costs, be paid to said Great Lakes Towing Company, in payment of its said claim based on said contract which it made with said St. Joseph-Chicago Steamship Company, which contract does not provide that said Great Lakes Towing Company should have any lien upon said steamer, or any part thereof, and no evidence was introduced tending to show that said contracting parties intended that said Great Lakes Towing Company should have any such lien, such payment to said Great Lakes Towing Company to be made forthwith, unless life salvor claimants file a bond for $2,500 within 15 days after the date of the entry of said order, namely, December 23, 1919.

29th. It is agreed by the respondent to this peti-

tion that the carrying out of said order and decree will be stayed pending action of this court on this petition.

30th. This petition is for writ of prohibition and mandamus to prevent the carrying out of, and to have vacated and set aside, said order and decree complained of herein, and entered as aforesaid in said limited liability proceeding begun by said St. Joseph-Chicago Steamship Company, in said United States District Court for the Northern District of Illinois, Eastern Division, No. 32231.

31st. In said limitation proceeding the petition for limitation stands for hearing upon answer of petitioner and exceptions of other claimants filed thereto, the questions as to the alleged right of said petitioner for the limitation prayed for and its alleged right to a permanent injunction restraining your petitioner and other claimants from prosecuting suits for full liability, have not been determined by the District Court, and until said court determines such questions, the rights of petitioner, a death claimant, and all other claimants in said limitation proceeding, to prosecute suits for full liability, and their rights otherwise, cannot be adjudicated.

32d. Petitioner and all other parties aggrieved are entitled to have their rights determined under the limited liability statutes and the Admiralty Rules prescribed by this court, according to due process of law, namely:

1. The questions as to the alleged right of said St. Joseph-Chicago Steamship Company to the limitation of liability which it prays for, including such alleged right to limitation under the limited liability

act of 1884, without paying into court the insurance on said steamer, and its alleged right to a permanent injunction restraining petitioner and all other claimants from prosecuting suits for full liability, must be determined.

2. If such limitation of liability should obtain and said injunction should be made permanent, then, under Admiralty Rule 55, there should be a final decree so adjudicating and passing upon all rights of all claimants, and "after payment of costs and expenses," such final decree should direct distribution of the limited liability fund.

3. If, also, such limitation of liability should obtain, and said injunction should be made permanent, and if by reason of the alleged abandonment of said steamer by said St. Joseph-Chicago Steamship Company to petitioner and said other limited liability claimants, they became the owners of said steamer as of the time immediately after it tipped over, then the question would arise whether said Great Lakes Towing Company had any right to enforce payment of its said claim based upon said contract made by it with said St. Joseph-Chicago Steamship Company, and whether the court had any jurisdiction to order the payment of such contractual claim, out of said limited liability fund.

4. If such limitation of liability should not obtain, and said injunction should be dissolved, then petitioner and other claimants would be entitled to prosecute proceedings for full liability, including damages sustained by reason of the granting of said injunction, and the rights of all parties otherwise, also would have to be determined accordingly.

33d. Said Great Lakes Towing Company has never filed in said limitation proceeding any claim other than said claim based on its said contract with said St. Joseph-Chicago Steamship Company and petitioner contends that, if he and said other alleged limited liability claimants became the owners of said steamer by reason of said alleged abandonment of it to them as of the time immediately after it tipped over, (which cannot be determined until said alleged right of said St. Joseph-Chicago Steamship Company to said limitation of liability prayed for has been adjudicated), and if, therefore, said Great Lakes Towing Company would be entitled to enforce a claim as against said petitioner and other claimants as such owners of said steamer, for the payment to it of a reasonable sum for its services in raising the parts of said steamer which it did raise, then petitioner and said other claimants have been deprived of their right to defend against such a claim, and the court has no jurisdiction to deprive them thereof, or to enter the order complained of directing the payment to said Great Lakes Towing Company of its said claim based on its said contract with said St. Joseph-Chicago Steamship Company, and particularly has the court no jurisdiction to enter said order under said present state of the record in said limitation proceeding.

34th. If, under said present state of the record in said limitation proceeding, said order complained of shall be carried out, said injunction restraining petitioner and other claimants from prosecuting proceedings for full liability will still be in force, petitioner and said other claimants will be deprived of the procedure provided by said Admiralty Rule 55

of a final decree being entered adjudicating upon all questions and claims, and "after payment of costs and expenses," ordering a distribution of the fund, which would permit petitioner and said other claimants to have all of their rights in the premises adjudicated on one appeal from such final decree, and petitioner contends that under the present state of the record the court has no jurisdiction to enter said order and decree, and that, in violation of the constitution said order deprives petitioner and said other claimants of their property (if said alleged abandonment of said steamer to them made it their property), without due process of law.

35th. Petitioner further says that there are no funds in said estate of Herman A. Ristow, deceased, with which to prosecute an appeal from said order complained of, and that if any relief could be obtained on such an appeal, it would be a great and improper hardship upon petitioner and said other claimants to force them to prosecute such an appeal.

Wherefore petitioner, on behalf of himself and all other aggrieved parties, prays that a writ of prohibition may issue against the said George A. Carpenter, judge of the District Court of the United States for the Northern District of Illinois, Eastern Division, and each other judge of said court, prohibiting him and them from proceeding or allowing proceedings under said order and decree complained of, so far as it allows said claim of said Great Lakes Towing Company for $41,883.98, with costs to be taxed, as a first, preferred and paramount lien against the funds now in the registry of said District Court arising from the sale of the steamer Eastland, enters

judgment thereon for said amount, with interest until paid at 5 per cent., and also for costs to be taxed, directs the clerk of said District Court to pay the amount of said judgment to said Great Lakes Towing Company, or to its proctors of record, from said funds now in the registry of said District Court, orders and decrees that live salvor claimants file a bond for $2,500 within 15 days after the date of the entry thereof, namely, December 23, 1919, or that in the event such bond be not filed within said time said clerk shall make payment of said judgment as aforesaid, and that a writ of mandamus issue directing and requiring said District Court to vacate and set aside said part of said order and decree.

JAMES F. BISHOP,
Administrator of the Estate of Herman A. Ristow, Deceased.

HARRY W. STANDIDGE,
Proctor for Petitioner.

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

James F. Bishop, being duly sworn, says that he is the duly appointed and qualified administrator of the estate of Herman A. Ristow, deceased; that he has read the foregoing petition and knows the contents thereof and that the same is true as he verily believes.

JAMES F. BISHOP,

Subscribed and sworn to before me this 8th day of January, A. D. 1920.

L. A. KELLY,
Notary Public in and for Cook County, Illinois.

IN THE DISTRICT COURT OF THE UNITED STATES.
For the Northern District of Illinois,
Eastern Division.

In the Matter of the Petition of The St. Joseph-Chicago Steamship Company to Limit its Liability as Owner of the Steamer Eastland.

Claim of Great Lakes Towing Company.

To the Honorable Judges of said Court and to the Commissioner:

Now comes the Great Lakes Towing Company by leave of the court and says:

1. It is a corporation duly created and existing under and by virtue of the laws of the State of New Jersey and is engaged in a general towing and wrecking business upon the Great Lakes, their con-

necting and tributary waters; that as such it has at all times mentioned herein had under its control and management wrecking tugs, and various steam pumps and other outfit and paraphernalia customary to be employed in rendering assistance to sunken vessels or vessels otherwise imperiled.

II. Your claimant, Great Lakes Towing Company, has a claim against the steamer Eastland amounting to the sum of $34,500 with interest thereon and the basis of its said claim is as follows:

That on the morning of July 24, 1915, said steamer Eastland while lying at a passenger dock on the south side of the Chicago River just west of Clark street bridge in the City of Chicago, Illinois, capsized and went over on her port beam ends, filled and settled on the bottom of the river where she lay partly submerged; that on or about July 27, 1915, your claimant entered into a contract evidenced by certain written communications hereinafter mentioned, to raise and deliver said steamer, righted and pumped out to a dock in the vicinity where she lay sunk for the sum of $34,500, no cure no pay, the written communications evidencing said contract being as follows:

1. Letter dated Chicago, July 25, 1915, directed to Captain Robert Young and signed by St. Joseph Chicago Steamship Company, and approved by T. C. Warkman, Surveyor for Underwriters, copy of which is marked Exhibit "A."

2. Letter dated Chicago, July 26, 1915, directed to The St. Joseph-Chicago Steamship Company and Underwriters and signed by Great Lakes Towing Company, by Alex Cunning, Wrecking Master and

approved by T. C. Warkman, Underwriters Surveyor, copy of which is marked Exhibit "B."

3. Letter dated July 27, 1915, directed to Mr. A. G. Lange, Chicago, Illinois, signed by St. Joseph-Chicago Steamship Company by W. H. Hull, Vice President, copy of which is marked Exhibit "C."

4. Letter dated July 27, 1915, directed to Great Lakes Towing and Wrecking Company, Capt. Alexander Cunning, Wreck Master and signed by A. G. Lange, copy of which is marked Exhibit "D."

Copies of said Exhibits "A," "B," "C" and "D" are attached hereto and made a part hereof; that in pursuance of said contract said Great Lakes Towing Company commenced salvage operations on said steamer and succeeded in raising and righting her and pumped her out and delivered her to a dock in the vicinity of where she lay sunk and she was accepted by the petitioner, The St. Joseph-Chicago Steamship Company.

III. Your claimant, Great Lakes Towing Company, further says that no part of said sum of $34,500 has been paid to it by anyone and that the whole thereof is due with interest.

Your claimant further says that it has filed herewith Answer to the said petition of the St. Joseph-Chicago Steamship Company denying its right to any limitation of liability against its said claim.

IV. Your claimant, Great Lakes Towing Company, further says that it has a maritime lien against said steamer Eastland paramount to all claims of every nature, kind and description.

Wherefore, your claimant prays that this Honor-

able Court will pronounce in favor of its claim and will decree that it has a preferred, paramount and first lien upon said steamer Eastland which has been surrendered and transferred to a trustee in pursuance of said limitation proceedings.

GREAT LAKES TOWING COMPANY,
By S. P. SHANE,
President.

GOULDER, WHITE & GARRY,
Proctors for Claimant,
Great Lakes Towing Company.

State of Ohio, }
Cuyahoga County. } ss.

S. P. Shane, being first duly sworn, on his oath says he is President of the Great Lakes Towing Company; that he has read the foregoing claim and knows the contents thereof and that the same is true as he verily believes.

S. P. SHANE.

Subscribed in my presence and sworn to before me this 31st day of August, 1915.

T. H. GARRY,
(Seal) *Notary Public.*

EXHIBIT "A."

Hotel La Salle.
Chicago, July 25, 1915.

Capt. Robert Young,
Dunham Towing & Wrecking Co.,
Wells St. Bridge,
Chicago, Illinois.

Dear Sir:

The steamer "Eastland" is lying capsized on her port beam ends West of Clark Street Bridge, Chicago in about 17 ft. of water. You are requested to submit your lowest bid to raise this vessel right her and deliver her pumped

free of water to a dock in the vicinity of where she now lies.

Your bid to include the cost and all expenses attached to any and all labor, materials, equipment, tools and any or all appurtenances required for the fulfillment of the contract.

The contractor must make his own arrangements with the Federal, State or Municipal authorities with respect to any permits required for the successful carrying out of the contract.

Your bid to be on the "no cure no pay" basis, payment to be made only on the successful completion of the contract.

The owners reserve the right to reject any or all bids.

Bids to be delivered addressed to the owners, not later than 5 p m. July 26, 1915, at the office of Messrs. Prindiville & Co., Insurance Exchange Building, marked "Bid to raise 'Eastland' where they will be opened before all parties concerned.

St. Joseph-Chicago Steamship Co.
W. C. Steele
Per A. G. Lange.

In accordance with letter of July 26/15 addressed to T. C. Warkman.

Approved:
T. C. Warkman,
Surveyor of Underwriters.

Exhibit "B."

Chicago, July 26, 1915.

The St. Joseph-Chicago Steamship Company and Underwriters.

Dear Sirs:—

Replying to your favor dated July 25, 1915, requesting the Great Lakes Towing Company to make a tender to salve the steamer "Eastland," now sunk in Chicago River near Clark street Bridge. We will make you the following proposition:

We will upon notification of the acceptance of

our proposition immediately commence with the necessary equipment to salve the steamer "Eastland" as expeditiously as circumstances will permit; on condition that the Great Lakes Towing Company is exempt from all claims from damage to hull of steamer Eastland or loss of time that said steamer Eastland may sustain during wrecking operations. We will deliver said steamer righted and pumped out to a dock in the vicinity of where she now lies for the sum of ($34,500), thirty four thousand five hundred dollars.

GREAT LAKES TOWING COMPANY,
By ALEX CUNNING
Wrecking Master.

Approved without prejudice.

Subject to the terms of the policies for the amount of $34,500.

T. C. WARKMAN,
Uwrs Surveyor.

EXHIBIT "C."

St. Joseph-Chicago Steamship Company,
St. Joseph, Mich. July 27, 1915.

Mr. A. G. Lange,
Chicago, Ill.

Dear Sir:—

We are satisfied to have you represent us in the matter of agreeing to a contract for the raising of the "Eastland" and delivering her alongside of the dock so that she may be surveyed and examined. You may, if it is necessary, sign a contract with the Wrecking Company to accomplish this purpose.

Yours truly,
ST. JOSEPH-CHICAGO STEAMSHIP CO.
B. W. H. HULL,
Vice President.

EXHIBIT "D."

July 27, 1915.

Great Lakes Towing & Wrecking Co.,
Capt. Alexander Cunning, Wreckmaster,
Chicago, Ill.

Gentlemen:—

"Eastland"

On behalf of the St. Joseph-Chicago Steamship Company, owner of the steamer "Eastland" and in accordance with its authority as per copy attached hereto, I hereby for and on its account, accept your proposal to raise the said steamer "Eastland" and deliver her into dock, for the sum of thirty four thousand five hundred dollars ($34,500), "no cure no pay," in all respects in accordance with the terms of the specifications dated July 25th, 1915, and your proposal dated July 26th, 1915, copies of which are attached.

Yours very truly,

AGL-DC (Signed) A. G. LANGE.

(Endorsed) Filed Sep. 1, 1915, T. C. MacMillan, Clerk.

No. 32231.

UNITED STATES OF AMERICA.

Northern District of Illinois.

Eastern Division.

In the matter of the Petition of the St. Joseph-Chicago Steamship Company to Limit Liability in the matter of the steamer Eastland. } Motion.

Now comes the Great Lakes Towing Company and moves the court for an order under which it shall be paid the amount of its claim for salvage as set up in its claim and petition heretofore filed herein,

that is, the sum of thirty-four thousand five hundred dollars ($34,500), with interest from August , 1915.

Said Great Lakes Towing Company represents that its said salvage claim in the sum of $34,500, with interest as aforesaid, is the first and paramount lien against said steamer or the proceeds of the sale thereof, and accordingly asks that said amount be paid to it out of the funds derived from the sale of said steamer.

GOULDER, WHITE & GARRY,
WILKERSON, CASSELS & POTTER,
Proctors for Great Lakes Towing Company.

(Endorsed) Filed Jan., 3, 1916, T. C. MacMillan, Clerk.

No. 32231.

IN THE
DISTRICT COURT OF THE UNITED STATES,
For the Northern District of Illinois,
Eastern Division.

In the Matter of the Petition of St. Joseph-Chicago Steamship Company, owner of the Steamer Eastland, for limitation of Liability. } ORDER.

At a stated term of the District Court of the United States for the Northern District of Illinois, Eastern Division, held in the court rooms in the Federal Building in the City of Chicago, on the 23d day of December, 1919.

Present: Hon. George A. Carpenter, District Judge.

This cause coming on to be heard upon the application of Sherwood S. Mattocks, on behalf of himself and other salvors of human life, to file amended claim, it is ordered by the court that leave be and the same is hereby given to the said petitioners to file their said amended claims and upon the application of the Great Lakes Towing Company for an order that the exceptions heretofore filed to the amended claims of the life salvors stand as exceptions to the said amended claims as amended, it is so ordered, and this cause coming on to be heard upon the said amended claims as amended and the exceptions of the Great Lakes Towing Company thereto, it is ordered by the court that the exceptions so filed to said amended claims as amended, which amount to a general demurrer and the exceptions that the services of the said life salvors and all and each of them were performed more than two years prior to the making or filing of any such claim and no sufficient excuse or reasons under the statute for said delay is given, be and the said exceptions are hereby sustained, and the other exceptions filed herein by the Great Lakes Towing Company are hereby overruled. Thereupon the said Sherwood S. Mattocks, for himself and other life salvors, having elected to stand by their said claims as amended, it is ordered by the court that the said claims of said life salvors and each of them be and the same are hereby dismissed, to each of which said rulings and orders of the court sustaining the exceptions of the Great Lakes Towing Company and dismissing the said claims as amended, the said Sherwood S. Mattocks, on his own behalf and on behalf of other life salvors, by their proctors, duly excepted.

And now the cause coming on to be heard on the motion and application of Great Lakes Towing Company, for a decree in accordance with the mandate of the Circuit Court of Appeals, it is now ordered, adjudged and decreed that the claim of Great Lakes Towing Company for thirty-four thousand five hundred dollars ($34,500), with interest at the rate of 5 per cent. per annum from September 1, 1915, amounting as of this date to forty-one thousand eight hundred eighty-three dollars and ninety-eight cents ($41,883.98), with costs to be taxed, is allowed as a first, preferred and paramount lien against the funds now in the registry of this court arising from the sale of the steamer Eastland. Judgment is accordingly rendered in favor of said Great Lakes Towing Company in said amount of forty-one thousand eight hundred eighty-three dollars and ninety-eight cents ($41,883.98), with interest until paid at 5 per cent., and also for costs to be taxed, and the clerk of the court is directed to pay the amount of said judgment to said Great Lakes Towing Company or to its proctors of record from said funds now in the registry of this court.

It is further ordered upon the application of the said Sherwood S. Mattocks, on his own behalf and on behalf of other life salvors, by their proctors, that payment of the amount of said judgment is hereby stayed for a period of fifteen days in order to allow an appeal from this decree. And it is ordered that on any such appeal, the bond shall be in the sum of twenty-five hundred dollars ($2,500), to be approved by this court.

And it is further ordered that in the event bond

be not filed within fifteen days from the date of this decree, the clerk shall make payment of the judgment as aforesaid.

(Enter) CARPENTER,
Judge.

23d Dec., 1919.

In the Supreme Court of the United States.

OCTOBER TERM, 1919.

No. —, Original.

EX PARTE THE UNITED STATES, PETITIONER.

MOTION FOR LEAVE TO FILE PETITION FOR WRITS OF MANDAMUS AND PROHIBITION.

The petitioner in the above entitled matter respectfully asks the Court for leave to file the petition presented herewith wherein it asks for a writ of mandamus directed to the Honorable Charles P. Orr, Judge of the District Court for the Western District of Pennsylvania, and to said Court, directing him to vacate an order quashing an indictment presented in the March, 1916, Term of said Court against one Josiah V. Thompson for violation of the banking laws of the United States, and to restore said indictment to the files of said Court, and wherein it asks for a writ of prohibition against the Honorable Charles P. Orr, Judge of the District Court for the Western District of Pennsylvania, directed to him and to the Court, prohibiting him from striking said indictment from the files of said Court for the reason that the presentment thereof by the grand jury did not receive his approval and consent.

THE UNITED STATES,
By ALEX C. KING,
Solicitor General.
ROBERT P. STEWART,
Assistant Attorney General.

140273—19——1

Now comes the United States by Alex C. King, its Solicitor General, and respectfully states as follows:[1]

I.

During the November Term, 1915, of the District Court for the Western District of Pennsylvania, a grand jury of the United States, duly empaneled and in session, presented that one Josiah V. Thompson had within said Western District wilfully misapplied certain of the moneys, etc., of the First National Bank of Uniontown, Pennsylvania, had wilfully made false entries on the books of said bank, and had sworn falsely in connection with certain reports to the Comptroller of the Currency, these violations of law having come to the knowledge of the grand jury through the testimony of witnesses before them. The grand jury, having presented the matter to the Court, requested that the Court inst uct the District Attorney to lay before the grand jury bills of indictment more particularly and at length setting forth said violations of law (Rec. 5).

Thereupon the following order was entered by the Court:

> And now, to-wit, February 4, 1916, the foregoing presented in open court, and ordered to be filed; and it is further ordered

[1] The references in this petition, except where otherwise noted, are to the printed record in *United States* v. *Josiah V. Thompson*, No. 250 on the docket of the October, 1919, term of this Court.

> that the United States Attorney prepare and present an indictment to the grand jury, as recommended. (Rec. 5.)

Thereupon the United States Attorney presented to said grand jury a bill of indictment against said Thompson containing forty-seven counts, thirty of which counts charged the following offenses, viz., wilful misapplication, abstraction, and embezzlement of the funds of the said First National Bank of Uniontown, Pennsylvania; but the said grand jury ignored the said thirty counts charging as aforesaid and refused to return the same as a true bill, whereupon the United States Attorney withdrew from the consideration of said grand jury the said thirty counts and submitted to them only the first seventeen counts of said proposed bill of indictment (Rec. 87, 94).

Thereupon, on February 8, 1916, and in the November, 1915, Term of said Court (Rec. 30), said indictment containing seventeen counts was filed against said Thompson in accordance with the said presentment and order of Court (Rec. 8–30). Counts one to eight, inclusive (Rec. 8–6), charged that Thompson, being president of the First National Bank of Uniontown, Pennsylvania, wilfully certified certain checks when the drawer thereof did not have funds on deposit at the time equal to the amount of the check, an act prohibited and punished by Section 5208, R. S., and Section 13 of the Act of July 12, 1882, c. 290, 22 Stat. 166. The checks particularized in the several counts were all checks of William

S. Craft, Treasurer of Fayette County, Pennsylvania. Counts nine to eleven, inclusive, charged Thompson with making false entries on the books of the bank in respect to its assets, in violation of Section 5209, R. S. Counts twelve to fifteen charged him with making false entries in the reports of the bank to the Comptroller of the Currency, counts twelve and thirteen as to the items already dealt with of the assets on the books of the bank, and counts fourteen and fifteen as to the borrowing of bonds. Counts sixteen and seventeen charged him with perjury in connection with his oath to these same statements to the Comptroller.

The Court's attention is respectfully invited to the fact that while the presentment of the grand jury aforesaid of the November Term, 1915, of said Court included among the matters which had been called to its attention and upon which it desired a formal bill of indictment the following, viz., that Thompson did wilfully misapply certain of the moneys, etc., of the First National Bank of Uniontown, Pennsylvania (Rec. 5), the bill as formally prepared and filed contained no charge upon this subject.

II.

The United States further respectfully states to the Court that on March 24, 1916, during the March Term of the said District Court for the Western District of Pennsylvania, a grand jury of the United States, duly empanelled and in session, presented to said Court that the said Josiah V. Thompson had

wilfully misapplied and abstracted certain of the moneys, etc., of the First National Bank of Uniontown, Pennsylvania, that their knowledge of the matter had come to them through witnesses sworn before them, and that they therefore requested the Court to instruct the United States Attorney to lay before them a bill of indictment, more particularly and at length setting forth said violations of law (Rec. 31). Whereupon the said Court caused the following order to be made:

> And now, to-wit, March 24, 1916, the foregoing presented in open court, and ordered to be filed; and it is further ordered that the United States Attorney prepare and present an indictment or indictments to the grand jury as recommended. (Rec. 31.)

At the time the above order was made by the District Court, the Court informed said grand jury that it had grave doubt as to whether the indictment was valid in view of the fact that the matters charged therein had been considered by a prior grand jury which had refused to vote a true bill in regard to them and that no action of the Court had been taken in regard to the presentment made by the grand jury of the March, 1916, Term, nor had the consent and approval of the Court ever been obtained thereto; but that, as the grand jury had completed its work, he would permit the indictment to be brought in but would reserve the question whether it should be and remain a true bill against the defendant.

Thereupon, and in accordance with this presentment and order of Court, on March 24, 1916, and in the March, 1916, Term of said Court, an indictment was filed against said Thompson (Rec. 32–77). It contained thirty counts. Counts one to twenty, inclusive, charged that Thompson, being President of the First National Bank of Uniontown, Pennsylvania, did wilfully misapply certain of the moneys, etc., of said Bank. (Rec. 32–66.) These counts all dealt with certain checks which, it was charged, Thompson unlawfully caused to be paid by the Bank. Counts one to twelve, inclusive (Rec. 32–52) dealt with checks drawn by William S. Craft, Treasurer of Fayette County, Pennsylvania. None of these checks, however, except that referred to in the second count (Rec. 34), was the same as the checks of the same drawer dealt with in the indictment of the November, 1915, Term of said Court. Counts thirteen to nineteen, inclusive (Rec. 53–66), dealt with certain checks of said Thompson, none of which had been referred to in the indictment of the November, 1915, Term of said Court. Count twenty (Rec. 66) dealt with the crediting to said Thompson's account of certain checks drawn to the order of said William S. Craft, Treasurer, none of which had been referred to in the indictment of the November, 1915, Term of said Court.

Counts twenty-one to twenty-nine (Rec. 68–75) charged that Thompson, being President of the First National Bank of Uniontown, Pennsylvania, did wilfully abstract and convert to his own use certain

moneys, etc., of the said Bank, a particular description of which was unknown to the grand jury.

Count thirty charged that Thompson, being President of the First National Bank of Uniontown, Pennsylvania, did wilfully embezzle certain bank notes belonging to said Bank.

The said indictment of the March, 1916, Term of said Court charged said Thompson with violations of the banking laws of the United States wholly different from those charged in the indictment of the November, 1915, Term of said Court and arising out of different transactions.

III.

(a) The United States further respectfully represents that thereafter the trial of said indictment of the March, 1916, Term of said Court was set during to-wit, the week beginning January 8, 1917, whereupon on December 29, 1916, the said Thompson filed a petition in said cause for a continuance because of the numerous charges contained in said indictment, and the serious nature thereof, and in order to give the petitioner time to prepare his defense thereto. A certified copy of said petition is annexed hereto marked Exhibit A. On December 30, 1916, a continuance was granted in accordance with this prayer.

On April 14, 1917, the said Thompson petitioned said Court for a further continuance, assigning the same grounds as in his previous petition. A certified copy thereof is attached hereto marked Exhibit B. On said April 14th a continuance was granted in accordance with said prayer.

The trial of said indictment having been continued to the November, 1917, Term of said Court, on October 8, 1917, said Thompson petitioned said Court for a further continuance to the May, 1918, Term of said Court for the same reasons given in his former petitions and so that additional time might be given him in which to prepare his defense to said indictment. A certified copy of said petition is annexed hereto marked Exhibit C. On October 16, 1917, a continuance was granted as prayed.

(b) Thereupon, on May 7, 1918 (Rec. 77), the said Thompson filed a motion to quash said indictment of the March, 1916, Term of said Court for the reason, among others, that the matters charged therein had been submitted to the grand jury of the November, 1915, Term of said Court, but that said grand jury had ignored said charges and had refused to return a true bill as to them; that these same matters had been submitted to the grand jury for the March, 1916, Term of said Court without the prior consent or approval of the said District Court for the Western District of Pennsylvania.

Thereupon, on May 8, 1918 (Rec. 79), the said Court granted said motion for the reason aforesaid, and ordered said indictment to be quashed.

Thereupon, on May 17, 1918 (Rec. 82), the United States filed a motion for a rehearing and to vacate said order quashing the indictment alleging that at the time the defendant's motion to quash was filed the statute of limitations had run as to the offenses charged in the indictment of the March,

1916, Term of said Court, and that said indictment had been prepared and filed in accordance with the presentment of the grand jury and the order of said Court. An answer was filed to this motion (Rec. 86), and the United States also filed a demurrer to the motion to quash (Rec. 93). A rule having been granted to show cause why a rehearing should not be had (Rec. 92), the said Court, on October 19, 1918 (Rec. 97, 98), refused said motion for a rehearing, overruled said demurrer and entered final judgment quashing said indictment of the March, 1916, Term of said Court, for the sole reason that the matters charged therein had been called to the attention of the grand jury for the November, 1915, Term of said Court which had refused to return a true bill in regard to them, and that their resubmission to a grand jury of the March, 1916, Term of said Court was without the knowledge, consent or approval of the said District Court. An opinion was filed (Rec. 94–97) setting forth the reasons of the Court at length, to which reference is hereby made.

Thereupon, on October 26, 1918 (Rec. 99, 100), the United States sued out a writ of error to said judgment under the Act of March 2, 1907, c. 2564, 34 Stat. 1246, and said writ was docketed as number 755 of the October, 1918, Term, number 250 on the October, 1919, Term of this Court.

Thereupon, the said Thompson, defendant in error in said cause, moved to dismiss said writ for lack of jurisdiction in this Court in that the said judg-

ment quashing said indictment was not an order or decision as to which said statute of March 2, 1907, gives the United States a right to a writ of error.

Your petitioner alleges that said judgment of said District Court quashing the indictment of the March, 1916, Term because, though duly charging violations of the banking laws of the United States, and presented by a grand jury of the United States duly empaneled and sworn to inquire into such violations, it had not received the prior consent and approval of said Court, was wholly without warrant of law, and exceeded the lawful jurisdiction of said Court.

Your petitioner further alleges that it is without adequate remedy at law to correct this unlawful exercise of jurisdiction by the said District Court unless this Court should decide that a writ of error lies under the Act of March 2, 1907, 34 Stat. 1246.

Wherefore your petitioner prays that an alternative writ of mandamus issue out of this Court to the Honorable Charles P. Orr, Judge of the District Court for the Western District of Pennsylvania, and to said Court, directing that the said order of October 19, 1918, quashing said indictment of the March, 1916, Term against Josiah V. Thompson be set aside and that said indictment be restored to the files of said Court, or that the said Honorable Charles P. Orr, Judge of said Court, show cause on a day to be fixed by this honorable Court why this should not be done.

Your petitioner further prays that an alternative writ of prohibition issue out of this Court, directed

to the Honorable Charles P. Orr, Judge of the District Court for the Western District of Pennsylvania, and to said Court, prohibiting him and it from striking said indictment from the files of said Court for the reason that the presentment thereof by the grand jury for the March, 1916, Term of said Court had not received his prior consent and approval, or that the said Honorable Charles P. Orr, Judge of said Court, show cause on a day to be fixed by this honorable Court why this should not be done.

Your petitioner further prays for all other and further relief which this honorable Court may deem proper in the premises.

THE UNITED STATES,
By ALEX C. KING,
Solicitor General.
ROBERT P. STEWART,
Assistant Attorney General.

CITY OF WASHINGTON,
District of Columbia, ss:

Personally came before me the subscriber Alex C. King, Solicitor General of the United States, who being duly sworn says that the foregoing petition is true in point of fact.

ALEX. C. KING.

Sworn and subscribed to before me, a Notary Public in and for the District of Columbia, this 1st day of October, 1919.

[SEAL.] W. MARVIN SMITH,
Notary Public, D. C.

My commission expires June 17, 1924.

Exhibit A.

The United States vs. Josiah V. Thompson. In the District Court of the United States for the Western District of Pennsylvania. No. 21 of November term, A. D. 1915, and No. 17 of March term, A. D. 1916.

PETITION TO CONTINUE TRIAL OF CASES.

To the Honorable, the Judges of the said Court:

The petition of Josiah V. Thompson, respectfully represents:

That he is the defendant in the above styled cases, and that the same are set for trial the week beginning January 8, 1917.

Your petitioner further represents, that—owing to financial embarrassments, on or about January 19th, 1915, the Court of Common Pleas for Fayette County, Pennsylvania, appointed receivers for all of your petitioner's estate, real and personal, for the purpose of conserving said estate in the interest of your petitioner's unsecured creditors, who are very numerous and whose claims against petitioner aggregate a very large amount.

That since the appointment of said receivers, your petitioner has been devoting his time in an effort to assist in making sale of coal lands, of which petitioner's estate very largely consists, in order that the proceeds arising therefrom might be applied, so far as possible, to the payment and discharge of the claims of his said unsecured creditors, whose needs are pressing and urgent.

That lately petitioner has been successful in helping to make sale of a large tract of said coal lands, but in order to consummate said sale, a large amount of work remains to be done, in the way of securing abstracts of and making title thereto etc. etc.—the detail knowledge of which is known only to your petitioner, and which will require several months of close application to complete the same.

That, in addition to the sale above referred to, other sales of coal lands are in contemplation, with reasonable assurance and expectation of making the same, and they likewise, have required and will require the time and attention of your petitioner for reasons similar to those above set forth; and if consummated, will result in still further discharge of petitioner's obligations to his said unsecured creditors.

That, by reason of your petitioner devoting his time and attention to said other matters, he has been compelled to neglect matters purely personal, and, as a consequence thereof, has had no opportunity to prepare his defense to the charges as contained in the indictments filed against him in the above styled cases.

WHEREFORE, by reason of the premises, and because of the numerous charges contained in said indictments, and the serious nature thereof, and in order to give petitioner time to prepare his defense thereto, he respectfully prays that the trial of said cases may be continued to May term of said Court next ensuing.

And he will ever pray, etc.

JOSIAH V. THOMPSON.

STATE OF PENNSYLVANIA,
County of Fayette, ss:

Josiah V. Thompson being duly sworn deposes and says, that he is the petitioner in the foregoing Petition, and that the statements of fact therein contained are true and correct, as he verily believes.

JOSIAH V. THOMPSON.

Subscribed and sworn to before me, this 29th day of December, A. D. 1916.

ELIZABETH M. LEONARD,
Notary Public.

Certified from the Record, this 27th day of Sept., A. D. 1919.

[SEAL.] J. WOOD CLARK, *Clerk.*

Exhibit B.

United States vs. Josiah V. Thompson. In the District Court of the United States for the Western District of Pennsylvania. No. 21, November term, 1915; No. 17, March term, 1916.

PETITION OF DEFENDANT TO CONTINUE TRIAL OF CASES.

To the Honorable, the Judges of the said Court:

The petition of Josiah V. Thompson, respectfully represents:

That he is the defendant in the above styled cases, and that the same are set for trial the week beginning May 7th, 1917.

Your petitioner further represents, that—owing to financial embarrassments, on or about January 18th, 1915, the Court of Common Pleas for Fayette County, Pennsylvania, appointed J. P. Brennan, W. G. Laidley and Andrew A. Thompson, receivers for all your petitioner's estate, real and personal, for the purpose of conserving said estate in the interest of your petitioner's unsecured creditors, who are very numerous and whose claims against petitioner aggregate a very large amount.

That since the appointment of said receivers, your petitioner has been devoting his time in an effort to assist in making sale of coal lands, of which petitioner's estate very largely consists, in order that the proceeds arising therefrom might be applied, so far as possible, to the payment and discharge of the claims of his said unsecured creditors, whose needs are pressing and urgent.

That lately, to-wit, on December 4th, 1916, petitioner was successful in helping to make sale of a large tract of said coal lands, approximating 12,000 acres in area, made up of a large number of small tracts formerly purchased by your petitioner, but in order to consummate said sale a large amount of work remained to be done in the way of securing abstracts of and making title thereto, etc., etc.,—the detail knowledge of which is known only to your petitioner.

That petitioner had confidently expected to have said sale closed and the money paid before the present time, but, by reason of certain litigation now pending in the Supreme Court of Pennsylvania, the closing of said sale has been delayed and there yet remains a large amount of work to be done in connection therewith, and to accomplish which petitioner believes his services are necessary and required.

That, in addition to the sale above referred to, other sales of coal lands are in contemplation, with reasonable assurance and expectation of making the same, and they likewise, have required and will require the time and attention of your petitioner for reasons similar to those above set forth; and if consummated, will result in still further discharge of petitioner's obligations to his said unsecured creditors.

That, by reason of your petitioner devoting his time and attention to said other matters, he has been compelled to neglect matters purely personal, and, as a consequence thereof, has had no opportunity to prepare his defense to the charges as contained in the indictments filed against him in the above styled cases.

WHEREFORE, by reason of the premises, and because of the numerous charges contained in said indictments, and the serious nature thereof, and in order to give petitioner time to prepare his defense thereto, he respectfully prays that the trial of said cases may be continued to November term of said court next ensuing.

And he will ever pray, etc.

JOSIAH V. THOMPSON.

STATE OF PENNSYLVANIA,
County of Allegheny, ss:

Josiah V. Thompson being duly sworn deposes and says, that he is the petitioner in the foregoing Petition, and that the statements of fact therein contained are true and correct, as he verily believes.

JOSIAH V. THOMPSON.

Subscribed and sworn to before me, this 14th day of April, A. D., 1917.

[SEAL.] L. H. MATHEWS,
Notary Public.

My commission expires January 19, 1919.

Certified from the Record, this 27th day of Sept., A. D. 1919.

[SEAL.] J. WOOD CLARK,
Clerk.

Exhibit C.

United States vs. Josiah V. Thompson. In the District Court of the United States for the Western District of Pennsylvania. No. 21, November Term, 1915; No. 17, March Term, 1916.

PETITION OF DEFENDANT TO CONTINUE TRIAL OF CASES.

To the Honorable, the Judges of the said Court:

The petition of Josiah V. Thompson respectfully represents:

That he is the defendant in the above styled cases, and that the same are on the trial list for November Term, 1917.

That, as heretofore represented by petitioner to your Honorable Court, owing to financial embarrassments, on January 19, 1915, the Court of Common Pleas of Fayette County, Pa., appointed J. P. Brennan, W. G. Laidley and Andrew A. Thompson Receivers for all of your petitioner's estate, real and personal, for the purpose of conserving said estate in the interest of your petitioner's unsecured creditors, who are very numerous and whose claims against petitioner aggregate a very large amount.

That after the appointment of said Receivers, certain persons, to-wit: Alexander C. Robinson, A. Plumer Austin, James A. Campbell, Allen F. Cooper (since deceased), Alfred R. Hamilton, George S. Harah and Edward T. Hitchman, at the request of the holders of a large amount of both the secured and unsecured claims against your petitioner, agreed to act for them as a Creditors' Committee, working in conjunction with said Receivers for the common purpose of conserving petitioner's estate in the interest of his numerous creditors.

That from the time of the appointment of the said Receivers and said Committee, until April —, 1917, your petitioner, at the request of said Receivers and said Committee, had devoted his entire time to their service, in helping to further and carry into effect plans for the purpose of realizing upon the assets of petitioner's estate to the end that the claims against petitioner might be discharged and the urgent needs of his creditors thereby relieved.

That on April —, 1917, your petitioner herein, by his petition that day presented, and said Receivers and Committee by their petitions, or by their several counsel, represented at length to your Honorable Court that, by reason of the nature, character and extent of petitioner's estate and the vast amount of detail information required in connection therewith, and which information was known only to your petitioner, the said services of petitioner to said Receivers and said Committee had been and were valuable and necessary and were still required, and that by reason of petitioner so devoting his time and attention to said other matters, he had been compelled to neglect matters more purely personal, and, as a consequence thereof, had had no opportunity to prepare his defense to the charges contained in the indictments filed against him in the above styled cases.

That upon consideration of said petition and the representations of counsel, so as aforesaid presented on April —, 1917, the trial of said cases against your petitioner were continued to November Term, 1917, of said Court.

Your petitioner further represents: That by order or decree of the Supreme Court of the State of Pennsylvania, duly made and entered May 7th, 1917, his said Receivers were discharged on the ground that

their appointment was not authorized by law, and by reason whereof the work theretofore done by them, and as well that in contemplation and unfinished, was annulled, and, of necessity, had to be abandoned, thereby requiring much of the labor and work in connection with petitioner's estate to be begun anew and thus requiring and demanding, as petitioner believed, still further of petitioner's time and attention, to the further neglect of matters more purely personal to him.

That almost immediately following the discharge of his said Receivers, your petitioner went to St. Paul, Minnesota, in company with certain members of said Creditor's Committee, together with their secretary and attorney and there, from May 14th to the 19th inclusive, consummated an agreement with parties representing Louis W. Hill, President of the Great Northern Railroad Company, Samuel S. Thrope, President of Realtors Association of America, and James F. Sperry, and their associates, whereby an option for thirty days was to be given for the sale of petitioner's said estate.

That before said option could be given it was necessary to secure the consent thereto of the unsecured creditors of petitioner and that for a month or more following said meeting in St. Paul your petitioner's entire time was devoted to the business necessary and required to obtain the consent of said unsecured creditors.

That the consent of said unsecured creditors to the granting of said option was duly obtained and said option to purchase petitioner's estate was accordingly given, to expire August 15th, 1917, and before which time it was accepted according to the terms thereof.

That one of the terms of said option is that a three years' extension of the secured creditors shall be obtained, and your petitioner, believing it to be to the interest of all parties concerned, and because of his acquaintance with said secured creditors and the detail in connection with the many business transactions involved, and also because there seemed to be no one else who could attend to this particular matter, has been devoting much of his time to securing said extensions from the date of the acceptance of said option to the present, thereby requiring petitioner to visit many parts of the country, including St. Paul, Minneapolis, Chicago, Cleveland, Pittsburgh, Washington, Philadelphia, New York and many other widely separated places, all to the still further neglect of petitioner's more personal affairs.

Your petitioner still further represents that following the said discharge of his Receivers, involuntary proceedings in bankruptcy against him were begun in this court, to the end that he has lately been declared a bankrupt, thus necessitating upon his part the preparation and filing of a schedule of his property and effects, the listing of assets and claims, &c., &c., as required by law, and which schedules required much time and labor upon his part, by reason of the many thousand of items required to be noted in detail, the complete knowledge of which was known to no one but your petitioner, and all of which again required your petitioner's time, to the further neglect of the matters contained in the charges preferred against him in the foregoing cases.

WHEREFORE, by reason of the premises, petitioner having for said reasons neglected the preparation of his defense to the indictments filed against him, and

because of the numerous charges contained in said indictments and the very serious nature thereof, he respectfully prays that additional time be given him in which to prepare his defense thereto and that therefore the trial of said cases may be continued to the May Term of said Court next ensuing.

And he will ever pray, &c.

JOSIAH V. THOMPSON.

Certified from the Record, this 27th day of Sept., A. D. 1919.

[SEAL.] J. WOOD CLARK, *Clerk.*

STATE OF PENNSYLVANIA,

County of Fayette, ss:

Josiah V. Thompson, being duly sworn, deposes and says that he is the petitioner named in the foregoing Petition and that the statements of fact therein set forth are true and correct, as he verily believes.

JOSIAH V. THOMPSON.

Subscribed and sworn to before me this 8th day of October, A. D. 1917.

J. B. MCPHERSON,
Notary Public.

Certified from the Record, this 27th day of Sept., A. D. 1919.

[SEAL.] J. WOOD CLARK,
Clerk.

○

NO._____ORIGINAL.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1919.

Ex Parte the United States, Petitioner.

MOTION FOR LEAVE TO FILE PETITION FOR WRITS OF MANDAMUS AND PROHIBITION, AND PETITION THEREFOR.

BRIEF CONTRA MOTION.

J. E. B. Cunningham,
R. M. Gibson,
W. C. McKean,

Attorneys for Josiah V. Thompson.

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IN THE
SUPREME COURT OF THE UNITED STATES.

October Term, 1919.

NO. ....., ORIGINAL.

Ex Parte the United States, Petitioner.

Motion for Leave to File Petition for Writs of Mandamus and Prohibition and Petition Therefor.

BRIEF CONTRA MOTION.

STATEMENT OF FACTS.

This matter is before the court on motion of petitioner in the above entitled matter for leave to file petition for writs of mandamus and prohibition directed to Honorable Charles P. Orr, Judge of the District Court for the Western District of Pennsylvania and to said Court requiring him to vacate the order quashing the in-

dictment returned against Josiah V. Thompson, at No. 17 March Term, 1916, of said District Court, who is also the defendant in error at No. 250 October Term, 1919, of this Court, and to restore said indictment to the files, and prohibiting him from striking said indictment from the files of said court, "*for the reason that the presentment thereof by the grand jury did not receive his approval and consent.*" (See pages 1 and 10 of said motion and petition.)

This reason, as stated, is misleading and confusing. An examination of the motion for leave to file the petition for writs of mandamus and prohibition and of the petition itself, and a comparison thereof with the printed record at No. 250, October Term, 1919, of this Court, indicates that the learned counsel for the government seem to be laboring under a misapprehension with respect to the real ground upon which the Honorable Charles P. Orr, presiding in the District Court of the United States for the Western District of Pennsylvania, quashed the said indictment.

Therefore, because of this seeming misapprehension, and consequent misleading and confusing statement of the reason for quashing said indictment, as set forth in said motion, we deem it of utmost importance that a clear understanding first be had of the *facts* connected with the *finding* and *quashing* of said indictment.

Relying upon the printed record at said No. 250 October Term, 1919, of this Court, as authority, the facts are as follows: In February, 1916, a grand jury sitting at *Pittsburg*, Pa., *after having the matter given them in*

charge by said District Court, investigated, passed upon and ignored the very matters charged in the indictment found by a subsequent grand jury sitting at Erie, Pa., in March, 1916, and which indictment, containing the *identical* charges, so as aforesaid ignored, *and no more*, was quashed by order of said District Court, (Printed record, 94, 87; Petition for mandamus, 3,) and to which order of court the Writ of Error was taken in this case. (Printed record, 1.)

This second indictment, (the one quashed), was found a true bill and returned into court under the following method of proceedure: Notwithstanding the fact that said grand jury, sitting at Pittsburg, had ignored the identical charges against said defendant contained and set forth in said second indictment, the United States attorney, with whom was associated a special assistant to the Attorney General, *without the institution of any new proceedings in any way against the defendant, and without the knowledge or permission of the court, but of their own motion, and, as counsel for said defendant apprehends, in excess of their authority, and in derogation of the rights of the defendant*, brought to the notice and attention of said subsequent grand jury, so as aforesaid sitting at the city of Erie, the said identical charges against the defendant, which had been ignored as aforesaid by the prior grand jury sitting in the city of of Pittsburg, and proceeded to call witnesses before said grand jury, sitting at Erie, to testify against the defendant in support of said charges, so as aforesaid ignored, many of whom had been called and examined by said

Pittsburg grand jury. (Printed record, pages 87, 88.) The fact of the refusal of the first grand jury to indict the defendant for the *specific* offenses *and in the form* set forth in the second indictment was admitted by the United States attorney at the time of the argument of the motion to quash the second indictment. (Printed record, 95.)

Following this said action upon the part of the United States attorney, a presentment was made by the Erie grand jury requesting that a bill or bills of indictment be laid before it more particularly and at length setting forth the violations of law upon the part of the defendat as contained and set forth in said presentment. Accordingly on the same day an order of Court was made in conformity with the said request of said grand jury, and on the same day, a few minutes after, the second indictment, containing *only* the charges so as aforesaid ignored at Pittsburg, was presented to the Court. (Printed record, 31, 94, 95.)

At the time, however, when said Erie grand jury made said presentment the Judge expressed himself orally as follows:

> "This presentment presented by the grand jury is received by the court. The court *has grave doubts* as to whether an indictment founded thereon is valid. It would be invalid for this reason: A similar presentment was made by the last grand jury in this District and they were authorized to present a bill embracing the matters which appear in this presentment. The court authorized them to bring in a bill in accordance with their presentment.

"*This matter is again brought to this subsequent* grand jury without the knowledge or the permission of the court, *and the court is of the opinion that there should have been an application to this court for a resubmission of this matter to a new grand jury, or that some action of the court should have been taken in regard thereto.* However, inasmuch as the great weight of your duties in this regard has been done and inasmuch as you have made this presentment, the court will permit you to bring in a bill of indictment in accordance with the presentment, *the court reserving,* however, the *legal question* as to *whether or not* the indictment so brought in should be and remain a true bill against the defendant." (Printed record, 95.)

Thereafter the trial of this case and the case at No. 21 November Term, 1915, of said District Court, likewise charging defendant with violations of the banking laws, were continued on petition of defendant, as set forth in said petition for writs of mandamus and prohibition.

On May 7, 1918, both of said cases were called for trial, and defendant for the first time was required to plead. Thereupon, before plea pleaded or jury sworn, the defendant filed motions to quash both of said indictments. (See Printed Record page 77 for motion to quash the second or Erie indictment. The motion to quash the first or Pittsburg indictment, was not included in the Printed Record.) On May 8, 1918, the court overruled the motion to quash the first or Pittsburg indictment, but sustained the motion as to the second or Erie indictment and ordered it quashed, assigning as a reason therefor as follows:

"It appears that the matters embraced within that indictment were the *identical matters* submitted to the grand jury which found the former bill at Pittsburg, in addition to the matters specially charged in that bill. (Pittsburgh bill.)

"It appears further that those matters were not included in the indictment at the Pittsburg term, and *were not deemed by that grand jury to be charges for which the defendant should be brought to trial.* THE RE-SUBMISSION of those matters to the later grand jury at the Erie Term *was without the knowledge or approval of the court.* THE RE-SUBMISSION of the offenses against the government to a new grand jury is *a matter of highest prerogative, and is always subject to the control of the court, and, in proper cases, always granted by the court.* * * *"

"I am satisfied that the matters in connection with the finding of the indictment at Erie were *more than irregularities*, and therefore, I must sustain the motion to quash the indictment found at Erie, * * *" (Printed Record, pages 79 and 80.)

Again in the opinion of the court, sur motion by the United States attorney for a re-hearing of the motion to quash, the reason for quashing this indictment is repeated in the following words:

"The *substantial* reason for sustaining the motion to quash the indictment, as expressed at the time of such ruling, was that the proceedings, taken as they were without the knowledge, approval, or direction of the court having charge of the grand jury and their proceedings, *were in violation of law* and *tended to impair the substantial rights of the defendant* * * *

"*The re-submission* of a case to the same or a new grand jury *is often allowed by the court*, but *only* upon some showing that such re-submission should be made in the interest of justice. *To permit the submission of the same matter to repeated grand juries*

until one is found favorable to pressure of the prosecution would be in violation of the substantial rights of citizens." (Printed record pages 95 and 96.)

For the reasons expressed in said opinion, the court ordered and directed that final judgment be entered on said motion to quash, which judgment was accordingly entered October 19, 1918. (Printed Record, pages 97 and 98.)

Thereafter, to wit, on October 26, 1918, the plaintiff in error sued out the Writ of Error upon which this matter first came into this court. (Printed Record, page 99.)

Another allegation of fact on page 7 of the petition in this matter might tend to mislead and confuse, to wit:

> "The said indictment of March, 1916, Term of said Court charged said Thompson with violations of the banking laws of the United States wholly different from those charged in the indictment of the November 1915 Term of said Court and arising out of different transactions."

This statement has a tendency to confuse, unless it be kept clearly in mind that by the "indictment of the November, 1915, Term" is meant the indictment *as returned and containing only seventeen counts*, and *not* the indictment *as originally presented* to the Pittsburg grand jury and *containing forty seven counts*.

With this understanding the statement becomes immaterial.

The *material* thing is that *the thirty counts* contained *in the Erie indictment are the identical thirty counts* which *the Pittsburg grand jury ignored*. As a matter of course

they are different from the seventeen counts now contained in the Pittsburg indictment.

That *every charge* contained in the *Erie* indictment was *considered and ignored* by the *Pittsburg* grand jury is perfectly clear from the findings of the court and the admission of counsel for the government. (Printed Record 79-80; Petition 3.)

Findings of Fact:

If the foregoing is a correct statement of the facts occuring in connection with the finding of the second or Erie indictment, it is submitted that the following are proper conclusions therefrom:

1. The matters submitted by the United States attorney to the grand jury at Erie, in March, 1916, resulting in the finding of the second indictment, were the *identical* matters *and no more*, that were *ignored* by the Pittsburg grand jury in February, 1916.

2. That the United States attorney submitted said matters, (*knowing* them to be the identical matters) so as aforesaid ignored, to said Erie grand jury without the knowledge, approval or direction of the court, having charge of said grand jury and their proceedings.

3. Notwithstanding the fair and timely warning by the court, at the time the presentment was made upon

which said Erie indictment was based, (to wit, March 24, 1916,) that he had *grave doubts* as to whether an indictment founded thereon would be valid, and although, upon said indictment being returned, to wit, the same day, the court, while receiving it, *reserved the legal question* as to whether or not the indictment so brought in should be and remain a true bill against the defendant, the United States Attorney *allowed more than two years to elapse*, during which time *no steps were taken on behalf of the Government* to correct the error, pointed out by the court at the time the indictment was received, or in any way to remove the doubt with respect to the validity of said indictment.

4. That the reason of the court for quashing said indictment, *as assigned in the motion* for leave to file petition for writs of mandamus and prohibition, namely, "that the presentment thereof (the indictment) by the grand jury did not receive his approval and consent," *is incorrect*, misleading and confusing.

5. *That the true reason* for quashing said indictment, as is plainly shown by the opinion of the court, was, that the United States attorney, in instituting the proceedings before the Erie grand jury, without the knowledge, approval or direction of the court having charge of the grand jury and their proceedings, *exceeded his authority*, and in so doing *clearly violated the substantial rights of the defendant*.

ARGUMENT.

Certainly the right of the Government to a writ of mandamus to compel the performance of a *ministerial* act or duty is not involved in this application, and need not be considered in this argument.

If, however, the order of the District Court, quashing said indictment, "was without any warrant of law and in excess of its lawful jurisdiction," as claimed by counsel for Petitioner, *then*, although the motion of the defendant in error (at No. 250 October Term, 1919, of this Court) to dismiss the writ of error should prevail, because the judgment complained of does not come within the provisions of the Act of March 2, 1907, the writs of mandamus and prohibition should nevertheless be allowed, under the decision of this Court IN RE GEORGE F. HARDING, petitioner, 219 U. S. 363, and the cases therein distinguished and reconciled,—the *exceptional* rule as decided in VIRGINIA vs. RIVES, 100 U. S. 313, and reafirmed in VIRGINIA vs. PAUL, 148 U. S. 107, applying, *instead* of the *general* doctrine as laid down IN RE GEORGE F. HARDING, supra.

In the case of VIRGINIA vs. RIVES, supra, repeated with approval in the HARDING case, supra, the Supreme Court state said *exceptional* rule in the following words:

> "It (the writ of mandamus) does not lie to control judicial discretion, *except* when that discretion has been abused, *but it is a remedy* when the case is *outside* of the exercise of this discretion and *outside*

> the jurisdiction of the court or officer to which or to whom the writ is addressed."

In the Harding case, commenting on the decision in the Rives case, the Court further say: "It is obvious from the opinion of the court and the concurring opinion that jurisdiction over the cause was taken *because of the extraordinary abuse* of discretion disclosed by the power attempted to be exerted, and the confusion and disregard of constitutional limitations which the asserted power implied * * * *"

But if the order or judgment of the court below in quashing the indictment *was not extra-judicial*, and although said defendant's motion to dismiss the writ of error should prevail for want of jurisdiction, and *even though* this court might question the soundness of the order or judgment in quashing said indictment, *yet*, the alternative writs of mandamus and prohibition *should not be allowed*, because, to be of avail to the Petitioner, they would have to be made absolute or peremptory, and that would be to substitute the judgment of this court for the judgment of the court below in a matter wherein it is without jurisdiction so to do. This position has its foundation in reason, and is in accord with the decisions of this court. EX PARTE GREUTTER, 217 U. S. 586; IN RE POLITZ, 206 U. S. 323; EX PARTE BURTIS, 103 U. S. 238; BARNES v. LYON, 187 Fed. 881, wherein it is affirmed that the writ of mandamus

> "will not lie to review, reverse, or alter affirmative judicial action of the court, *had in the exercise of legitimate jurisdiction*."

It is also said in EX PARTE WHITNEY, 13 Pet. 404,

> "it (mandamus) will not lie to correct errors of judgment arising during the progress of the proceedings *within the jurisdiction* of the tribunal by annulling what has been done judicially, any more than it can be used to correct the judgment at the end of the trial, even though the error may operate harshly upon a relator."

> "If a court has acted, its action, no matter how erroneous, cannot be reviewed by mandamus, and the court cannot be compelled to change its action or exercise it in a different manner, irrespective of whether the party has another remedy." Kimerlin v. Comrs. Five Civilized Tribes, 10 Fed. 653; Lyle v. Cass, Cir. Judge, 157 Mich. 33, 121 N. W. 366; People v. Wayne, Cir. Judge, 1 Mich. 359; Stand. Cyc. Proc. Vol. 19, page 100.

THE TRUE PRINCIPLE: In Wiley v. Judge, 29 Mich. 487, 495, Stand. Cyc. Proc. Vol. 19, page 192, the court (per Christiancy, J.) held the *true principle* to be, "that if the inferior court has acted *judicially* in the determination of a question of fact, or a question of law, at least if *the latter* be one properly arising upon the case itself, and not some collateral motion or matter,—that is, if the case or proceeding before it, upon the facts, raised the particular question in such a shape as to give it *the power judicially* thus to determine it,—*then* such determination, *however erroneous, cannot be reviewed*, nor can any order the court may have made, or action it may have taken in consequence of it, be disturbed or reversed or reviewed by mandamus * * *. *But*, if the case before the lower court does not, upon its facts or the evidence, legitimately raise the question of law or fact it has assumed to decide, so that the court could act judicially upon it,

or so as to give the court the power judicially to make the decision it has assumed to make, *then* its action is not properly judicial, and no assumed determination of it, nor any order resting upon it, will preclude the remedy by mandamus, *provided* the case be in other respects a proper one for that species of remedy."

The Question for Determination:

The question for determination is, therefore, was the order of the court below in quashing the indictment *extra-judicial?* Counsel for the defendant therein contend that *it was not*, and in support thereof submit:

FIRST. The matters submitted by the United States Attorney to the grand jury at Erie, in March, 1916, resulting in the finding of the second indictment, being the identical matters, *and no more*, that were *ignored* by the Pittsburg grand jury in February, 1916, *and being so submitted without the knowledge, approval or direction of the Court*, having charge of said grand jury and their proceedings, was, under the attendant circumstances, an act upon the part of the District Attorney *without sanction of law, an usurpation of a power not a prerogative of his office*, and, consequently, an *extra-official* act upon his part, *and therefore void*. Wherefore, the consideration by the court of defendant's motion to quash, and his consequent action, in quashing the indictment so found, was *only the performance of a duty* imposed upon him by law, *discharged in the exercise of proper judicial discretion, clearly within the limits of the*

court's authority, and therefore *not* an extra-judicial act, and was in keeping with and justified by the following authority:

> "Although it is a generally accepted rule that, unless it is provided to the contrary by statute, a charge which has been ignored by one grand jury, or in respect to which it has returned 'not a true bill', *may be* again submitted to and considered by another grand jury, *yet* it is said that the power which is vested in the court to order such a re-submission *should be exercised with a considerable caution*. So it is declared in this connection in a case in New York that 'while the court has power to permit the charges to be again submitted to the grand jury *such power should be sparingly and discriminatingly used. It is a practice that ought not to be encouraged*, nor granted *pro forma*. *The court should act judicially, and permit such re-submission only when facts are presented which justify such action.*'" JOYCE ON INDICTMENTS Sec. 120, citing PEOPLE vs. NEIDHART, 71 N. Y. Supp. 591, 15 N. Y. Cr. R. 475, holding that the court will not direct that a charge be re-submitted merely on the affidavit of the district attorney that he is of opinion that the grand jury misunderstood the law, and that if the charge is again submitted an 'indictment may be found'. Judge FOSTER said as to this: "*To permit the District Attorney, because he does not agree with the grand jury, and seemingly for no other reason, to continue resubmitting complaints to other grand juries until one can be found to agree with him, is to place in his hands a power of persecution which I am unwilling to sanction*, and which I am quite sure he does not desire. The verdict or decision of the grand jury is justly entitled to great weight and should not be lightly brushed aside or ignored."

A foot note to the foregoing quoted section of JOYCE

ON INDICTMENTS says: "If a man be committed for a crime, and no bill be preferred against him, *or if it be thrown out by the Grand Jury*, so that he is discharged by proclamation, he is still liable to be indicted, though the sending up of a second bill, after an ignoramus, *is an extreme act of prerogative, subject to a revision of the court*. WHARTON'S Cr. Pl. and Pr. Sec. 446, quoted in UNITED STATES vs. MARTIN, 50 Fed. 918.

In the case of COMMONWEALTH v. GREEN, 126 Pa. St., 531, where the grand jury had made a presentment and upon which presentment the District Attorney, *by leave of the Court*, sent before the Grand Jury an indictment based upon this presentment, and a true bill was returned, the Court below, on motion, quashed the indictment. Upon writ taken by the District Attorney, the matter came before the Supreme Court of the State where the action of the lower Court was affirmed.

MR. JUSTICE CLARK, in delivering the opinion of the Supreme Court, (after discussing the ordinary and the three several extraordinary methods of instituting criminal actions,) said:

> "The *presentment* therefore, as a basis for the indictment, *was wholly insufficient*, for the reason that it was *not found* by the grand jury, upon *their own knowledge and observation* * * *
>
> "What was done in this case is just what is done in all cases of a presentment by the Grand Jury: the presentment was placed in the hands of the District Attorney, by the Court, with instructions to put it in the technical form of an indictment, signed by the Commonwealth's officer, for the formal action of the Grand Jury, and upon return

thereof, the defendant was liable to process, and was required to plead."

"It is certainly true, however, as we have said, that the District Attorney, in an *exigency*, or when the occasion seems to require, may prefer an indictment before a grand jury *without* a previous binding over or commitment, but this power is *only* to be exercised under the circumstances stated for the public good, and *then* the proceeding is always under the supervision and control of the Court * * * "

"*It is plain that the exigency of this case did* not require, or even appear to require, this extraordinary exercise of power, on the part of the district attorney. *There was no emergency, no demand of haste, no effort to escape, not even any appearance of an escape; there was no public good to be subserved, indeed there was absolutely nothing to call for this unusual method of procedure, and it is not pretended there was. It is true* that in this case the *indictment* was prepared and sent to the grand jury *'with leave of the court,'* but the court, upon being informed that the *presentment was not made upon the knowledge and observation of the grand jury*, and was therefore no presentment at all, had a right to revoke that leave, and to quash the bill, which was done."

SECOND. The proceedings instituted by the United States Attorney before the grand jury at Erie, resulting in the presentment to the court upon which the second indictment was based, *was in the nature of an inquisition.* That a grand jury does and always has possessed inquisitorial power is not denied; that, in the early day, it possessed the power, *on its own initiative*, without restriction, to set the machinery of this prerogative in motion is, perhaps, true; that in some of the states of the Union it still possesses and exercises this same power is

conceded (but not so in Pennsylvania.) As a general proposition, however, we believe it to be true that grand juries in most jurisdictions, have long since been deprived of this initiative, and can only exercise their inquisitorial powers, *when directed so to do by the court having charge of their proceedings.* It is further submitted that neither the King's Counsel, nor the Attorney General or District Attorney, under our system of criminal law, *ever possessed the power* of setting in motion inquisitorial action by a grand jury. For so long a time do we believe this has been the law governing the action of grand juries, in this particular, that it has become elemental, and, therefore, *the action of the United States Attorney in instituting the said proceedings* before the Erie grand jury, *without* the knowledge, consent, approval or direction of the court was *extra-official;* and, therefore, *void*, and the court discharged but a plain duty, clearly within the limits of its power, in quashing the indictment based upon a proceeding so clearly illegal.

We think the following expresses the present day generally accepted view as to the exercise of the inquisitorial power of a grand jury, and likewise supports the foregoing proposition:

> "* * * There can be no question about the fact that, at common law, a grand jury was charged especially with inquisitorial duties, and where there is probable cause to suspect that the law had been violated, they were considered bound by their oaths to institute inquiry and investigation. They had *originally* 'the right to send for witnesses and have them sworn to give evidence *generally*, and to found presentments on the evidence of such witnesses'

* * * *. But though it is the duty of the grand jury to investigate criminal offences, *they do not possess power to summon witnesses before them for the purpose of ascertaining whether there has been any violation of the law, where no specific violation of any law, is known. The grand jury cannot*, for the purpose of finding an indictment, summon persons before them to give their general knowledge of the violation of the penal laws *when the fact to be investigated has not been discovered by the grand jury or any member thereof, and when that body knows* nothing of the person connected with or guilty of the offence. In this connection it is said in a case in Georgia: 'It is true that each member of the grand jury is under a solemn obligation to make diligent inquiry and to present truly all infractions of the criminal law, which may be given the body in charge, or may come to the knowledge of any of them touching the service in which they are engaged. That the powers of the body are inquisitorial to a certain extent is undeniable; *yet they have to be exercised within well defined limits.* Anything they can find out by their own inquiry and observation is legitimate and praiseworthy, *but they have no authority to force private persons or the officers of the courts to disclose to them who may have violated the public laws, and the names of persons by whom such infractions* can be established;—in short, to make every man a spy upon the conduct of his neighbors and associates, and compel him to violate the confidence implied in holding social intercourse with his fellows by forcing him to become a public informer. Such an exercise of power would be in derogation of general principles essential to the enjoyment of rights regarded as sacred and paramount in the intercourse between man and man; and these rights have been carefully guarded, not only by the spirit of our law, but by its express enactments.' JOYCE ON INDICTMENTS, Sec. 87, citing STATE v. WILCOX, 104 N. C. 847, per AVERY, J.; WHARTON ON CRM. LAW, Sec. 457.

Note h; STATE v. BROWN, 62 S. C. 347; IN RE LESTER, 77 Ga. 143, 147; UNITED STATES v. KILPATRICK, 16 Fed. 768; LEWIS v. BOARD OF COMMISSIONERS OF WAKE CO., 74 N. C. 197. In this latter case it was declared, inter alia: "*a prosecuting officer has no right, of his own motion, or upon that of an officious, if not an intermeddling and malicious prosecutor, to send witnesses to the grand jury room,* merely to be interrogated whether there has been any violation of the criminal law, within their knowledge. *The law denounces such inquisatorial powers,* which may be carried to the extent of penetrating every household, and exposing the domestic privacy of every family. The repose of society, as well as the nature of our free institutions, forbid such a dangerous mode of inquisition. While the grand jury may thus proceed in prosecutions *instituted by themselves, upon their own knowledge and observation,* private individuals who may desire to prosecute offenders, have the right to inform the solicitor and have him *to frame a bill of indictment* against the accused, indorsing upon it the name of the prosecutor, as such, with such other witnesses as he may desire, *and send the bill with the witnesses to the grand jury.*"

By reason of the expression contained in the foregoing, to wit, "it is true that each member of the grand jury is under a solemn obligation to make diligent inquiry and to present truly all infractions of the criminal law *which may be given the body in charge,*" and because of similar expressions in other authorities, it seems pertinent to arrive at an understanding of what is meant by '*which may be given the body in charge.*'

So long ago as the time of JUDGE ADDISON, (September Session, 1792,) in a charge to the grand jury in explanation of the oath of a grand jury, he said:

> "The subjects, on which the deliberations of the grand jury may be exercised are either *such as are given them in charge*, or such as they know of their own knowledge. The regular way of *giving any matter in charge* to a grand jury, is by an accusation drawn up in a certain form, according to the nature of the offense, by the law officer for the prosecution of offences, and given to the grand jury, to be compared with the testimony of the witnesses to support it. *This is called an indictment*, or, more strictly speaking, a bill, and when the grand jury have found it true, then an indictment." ADDISON'S REPORTS, under head of "CHARGES TO GRAND JURIES," page 37.

WHARTON'S CRIMINAL PROCEDURE, Volume 2, 10th Edition, Sec. 1262, published in 1918, refers to this charge by Judge Addison and adds as a comment thereon;

> "As the learned Judge, (Addison), however, in the same charge, intimates an opinion that a grand jury is not to be permitted to summon witnesses before it, except under the supervision of the court, it would seem that *the inquisitorial powers* which he describes are to be *only exercised* on subjects which are *given in charge* to the jurors *by the court*, or rest in their personal knowledge."

THIRD. (A) The order or judgment of the court below, in quashing the indictment in question, *was entirely in keeping with the practice in such matters in the Pennsylvania Courts*, wherein the exercise of such supervisory power is recognized as a justifiable and proper act of judicial discretion. See COMMONWEALTH v. GREEN, 126 Pa. St., 531, Supra.

(B) Federal Courts will follow and be governed by the practice of state courts in matters not otherwise provided for in Federal procedure, where the same is not inconsistent with the Constitution and laws of the United States.

The discussion of and authority for these propositions (A) and (B) are set forth in our Brief on the Merits at No. 250 October Term, 1919, of this court, and for that reason further comment thereon is herein omitted.

FOURTH. Petitioner for the writs of mandamus and prohibition sets up the several continuances of the trial on said indictment, had at the instance of the defendant, thereby imputing such laches on his part, (as we apprehend), as would bar presentation and consideration of his motion to quash at the date upon which it was presented, regardless of any merit it might otherwise possess. (See Petition, p. 7.)

This, likewise we have answered in our brief on the merits. Suffice it here to say: This dilemma, if it be such, of the representatives of the government is of their own making. Even after the court had directed their attention to the irregularity and illegality of their procedure (Printed Record, p. 95), they persistently and almost defiantly ignored his fair and timely warning. This is too plain for argument.

Although the statute of limitations was running against the alleged offenses, the representatives of the government elected, despite the warning of the court, to

stand upon the position they had taken, and they should not now be heard to complain.

As was stated by the court in his written opinion, (Printed Record, p. 97):

> "No steps were taken on behalf of the Government to correct the error pointed out by the court at the time the indictment was received. The representatives of the Government at that time should have presented a petition and laid the grounds, if any, for an order of the court, permitting the resubmission of the matters to the grand jury, but no steps were taken by the Government in any way to remove the doubt with respect to the validity of the second indictment."

FIFTH. The further allegation in said petition, to wit, "that petitioner is without adequate remedy at law * * * * unless this Court should decide that a writ of error lies * * * * *", (See Petition, p. 10) is no reason why said writs of mandamus and prohibition should issue, if the Court below had jurisdiction to hear and determine the motion to quash, *even though this Court might differ with the Court below* in a determination of the question raised in said motion.

We think the decision of the Supreme Court of Pennsylvania in the case of COMMONWEALTH EX REL. BRACKENRIDGE v. THE JUDGES OF THE COURT OF COMMON PLEAS OF CUMBERLAND COUNTY, as reported 1 Sargeant & Rawle's Reports, p. 187, (Pa. Supreme Court) is pertinent to this claim upon the part of petitioner.

This was a motion for a rule to show cause why a mandamus should not be issued against the Judges of the Court of Common Pleas of Cumberland County commanding them to proceed to the examination of Alexander Brackenridge, and if found competent, to admit him to practice as an attorney of their court,—the Court of Common Pleas having refused his application.

The Supreme Court denied the mandamus.

In the opinion denying the motion, the Supreme Court, inter alia, said:

> "It has been said, that for every wrong the law has provided a remedy, and that right and redress are correlative terms. This is true, as a general proposition, but cases often happen wherein its uniform correctness on principles of abstract justice may fairly be doubted. An instance is given by MARSHALL, Chief Justice, in 4 HALL'S LAW JOUR. 87. The most gross trespass done to a freehold can only be sued for in the county wherein the lands lie, and where the trespasser may never be found. The process of the Court must be executed in order to give it a right to try the cause, and the trespasser by keeping out of the county, is wholly dispunishable, unless the offence be attended with such circumstances as render it indictable. Thus in SHORTZ v. QUIGLEY, (1 BINN., 222.) it was held that a bill of exceptions does not lie to the opinion of the Court in receiving or rejecting testimony, on a motion for summary relief. Although the hardest cases may occur under such interlocutory decisions, and palpable injustice may ensue therefrom, yet Courts of error are not at liberty to review the same. The law confides the exclusive order and direction in such cases to the legal discretion and judgment of the Court having jurisdiction over the subject matter. And thus also, in BURD v. DANSDALE'S LESSEE, 2 BINN., 91, it

was adjudged, that this Court cannot take cognizance of a refusal in the Court of Common Pleas to grant a new trial. The Chief Justice there asserts that it was decided by the High Court of Errors and Appeals, at their last session, that a writ of error did not lie on the decision of the Supreme Court on a motion, unconnected with the trial of a cause. We can be at no loss to conceive many cases, wherein gross injustice may possibly be done to suitors, and yet they may be wholly remediless in any Court of Error and Appeal. And we, moreover, must keep in mind, that the existence of a right is always questionable, when the wisdom of the law affords no adequate remedy on its violation.

Upon both grounds which I have mentioned, I am constrained to deny the mandamus which has been applied for, although I am clear in my opinion on the construction of the rule."

SIXTH AND FINALLY. To summarize or recapitulate the foregoing: In determining whether or not the writs of mandamus and prohibition prayed for should issue, the question is, *not* what are the powers and prerogatives of a grand jury, *but*, did the United States Attorney have the right, under the circumstances, to depart from all recognized methods of instituting criminal prosecutions (both ordinary and extraordinary) and of his own motion, on his own initiative, without the knowledge, consent or approval of the court having charge of the grand jury and its proceedings, resubmit to a subsequent grand jury the identical charges ignored by a prior grand jury?

WHEREFORE, believing that the order or judgment of the Court below, in quashing the indictment in

question *was not* an abuse of discretion, and therefore, *not* an extra-judicial act, but, to the contrary thereof, *the motion to quash raised such a question as the court had full power judicially to determine*, and that, therefore, said order or judgment cannot be disturbed, reviewed or reversed by mandamus, we respectfully submit that the motion to file a petition for writs of mandamus and prohibition should be denied.

J. E. B. Cunningham,
R. M. Gibson,
W. C. McKean,

Attorneys for Josiah V. Thompson, Defendant in the Indictment at No. 17 March Term, 1916, District Court for the Western District of Pennsylvania.

IN THE

SUPREME COURT OF THE UNITED STATES

IN THE MATTER

OF

JAMES J. O'BRIEN.

PETITION FOR RULE.

JAMES J. O'BRIEN,

Petitioner in Person,

No. 275 Academy Street,

Astoria, New York.

SUPREME COURT OF THE UNITED STATES

IN THE MATTER

of

The application of JAMES J. O'BRIEN for leave to file petition for rule to Honorable Edwin L. Garvin and the Honorable Harland B. Howe, both District Judges of the United States.

And now comes the petitioner, James J. O'Brien in person, and moves for leave to file the petition for the writ of mandamus and of prohibition, hereto annexed and he further moves that a rule be entered and issue directing the Honorable Edwin L. Garvin and Honorable Harland B. Howe ,District Judges of the United States, to show cause why the writs of mandamus and of prohibition as prayed for in said petition, should not issue against them in accordance with the prayer of the said petitioner and why said petitioner should not have such other and further relief in the premises as may be just and equitable.

JAMES J. O'BRIEN,
Petitioner in Person,
P. O. Address,
275 Academy Street,
Astoria, New York.

To the Honorable Edward Douglas White, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

The petition of James J. O'Brien, respectfully shows:

1. Petitioner would respectfully state that he is a resident and citizen of the State of New York and has heretofore instituted two suits in Equity in the District Court of the United States for the District of Connecticut, in both of which your petitioner was plaintiff and in one of which Walter B. Lashar, Percy P. Anderson, John J. Anderson and the Fairfield Park Land Co. were defendants and in the other, Percy P. Anderson, Walter B. Lashar and The Fairfield Park Building Company were defendants, all of whom are residents and citizens of the State of Connecticut, and that the said suits bore the File Numbers of 1516 and 1517 respectively.

2. That on the 21st day of November, 1919, the original bills were filed in the office of the Clerk of said District Court, and thereafter proof of services by the return of the Marshal making service upon all the defendants as shown by the docket of the court. That the time for filing of a plea or answer to the bills had expired on or before the 22nd day of December, 1919, the defendants failing to file a plea or answer and the time to file such plea or answer not having been enlarged by a judge of the court all the defendants were in default. That at no time since have any of the

defendants filed an answer or affidavit setting forth the merits of their defense, to the bills of your petitioner in said suits in equity above referred to. That the defendants entered no appearance on the merits of the causes.

3. On the 29th day of December ,1919, on motion duly coming on before him to be heard, Judge Garvin of the said District Court directed that decrees pro confesso be entered in both suits in favor of your petitioner. Your petitioner, then, all the defendants being in default, waived formal notice of a hearing of a motion to open the default of the defendants. Judge Garvin attempted to reopen their default, by granting the defendants until January 26, 1920, upon the payment of $50.00 costs to your petitioner, *"to plead or make such motions as they may be advised"*. This, your petitioner contends and respectfully alleges, Judge Garvin had neither the *power or discretion* to grant, as he is *affirmatively and injunctively* bound by the simple mandatory and positive language of Rule 17 of the Rules of Equity, passed by your Honorable Court to regulate the practice of the Courts of Equity of the United States.

4. The court did not order the defendants to file an answer and in the application to reopen the decrees pro confesso, none of the defendants presented any answer verified or unverified or any affidavits of merits. The defendants did not pay the costs to petitioner but on the contrary attempted to revive, on the 28th day of January, 1920, before Judge Howe of the District Court, motions to dismiss which had been made while they

were in default, and which motions were first denied by Judge Garvin in his original memorandum purporting to reopen the decrees pro confesso and subsequently modifying his denial of said motions, by making said denials "*without prejudice to refiling and arguing these motions after the causes are reinstated by the payment of costs*". This modification was arrived at by him after he had improperly and illegally received and considered at Chambers various letters, affidavits and communications received from the solicitors for the defendants, and from a President of a Bank which was not a party in any of the causes and which were received by him subsequent to the submission of the motions and after the close of argument and without notice to your petitioner or granting him an opportunity to be heard.

5. On the said 28th day of January, 1920, because the defendants had not filed any answers and had not at any time personally made any application to reopen the decrees pro confesso and furthermore had not paid the costs imposed by Judge Garvin ,and over thirty days having elapsed since the defendants were in default, a mition of your petitioner for final judgment came on before Judge Howe to be heard. This motion for final judgment was denied and privilege was given to the defendants to pay into court in legal tender on or before January 30th, 1920, the costs heretofore imposed by Judge Garvin, to be effective however as of the date of the receipt of an alleged check by the Clerk of the said District Court, but the receipt of which check, however,

does not appear on his docket although the Clerk verbally stated to the Court that it did so appear. *Judge Howe refused your petitioner's request to direct the defendants to file their answer in compliance with Rule 17.* The motions to dismiss were adjourned by his order sine die until the determiantion of an appeal of your petitioner to the Circuit Court of Appeals for the Second Circuit from the orders of both Judges Garvin and Howe.

6. Your petitioner prepared his appeals and after he had gone to the expense of printing his case and brief on appeal and had served copies of same on his adversaries, they made a motion to dismiss the appeal upon the ground they were made from interlocutory orders and therefore not cognizable on this ground, and thereafter on the 7th day of April, 1920,the Circuit Court of Appeals for the Second Circuit dismissed the appeals without a hearing on the merits.

7. Your petitioner is a man of the most modest means while some of the defendants are rich, influential and merciless in their treatment of him and although your petitioner has clearly indicated in his bills the embezzlements of one of the defendants, Percy P. Anderson, no attempt has been made to cooperate with your petitioner to protect the assets of the defendant corporations in which your petitioner is the largest individual stockholder. Your petitioner has persistently contended that the defendants cannot and dare not meet his allegations of wrongdoing under oath in any answer, affidavit or pleading without

subjecting themselves to a prosecution for perjury, so conclusive is the evidence of guilt in the possession of your petitioner.

8. Your petitioner's right to appeal having been denied, he has no adequate remedy either at law or in equity unless this court interferes by the writs of mandamus and prohibition to Judge Garvin and Judge Howe from illegally opening the decree pro confesso other than by the Rules of Equity provided and by mandamus to Judge Garvin and Judge Howe directing them to enter final judgment in favor of your petitioner in both bills and to vacate the void orders of said Judges Garvin and Howe heretofore made and entered in said two causes in equity. A copy of your petitioner's causes on appeal in the Court below is hereto annexed and made a part of this petition as if fully set forth herein.

9. Your petitioner respectfully asks leave to present arguments on the applications herein made; and he further asks that this Honorable Court direct the Clerk of the United States Circuit Court of Appeals for the Second Circuit to deliver to this Court, nine copies of the said record on appeal now on file with the said Clerk in the Circuit Court of Appeals for the Second Circuit, or that this Honorable Court direct that the original records from the District Court of Connecticut be produced before your Honorable Court.

Unless the application of your petitioner is granted the defendants may dissipate, deplete,

conceal and destroy the assets of the defendants' corporations whose rights of property your petitioner is desirous of protecting and conserving and with which acts your petitioner will be powerless to interfere. Furthermore, no command having been made that the defendants file answers and comply with Rule 17 of Rules of Equity, the suits of your petitioner never having been at issue, cannot be tried and determined. But under the plain language of said Rules of Equity, bearing as they do the valid force of Statute Law, plainly give to your petitioner a substantial right, namely, the right to judgment final and absolute against the defendants in both causes.

9. No previous application has been made for the relief herein sought.

WHEREFORE your petitioner prays that a rule be made and issue from this Honorable Court directed to Judge Harland B. Howe and Judge Edwin L. Garvin of the District Court of the United States directing the said Judges to show cause why a writ of mandamus should not issue commanding the said Judges to order the entry of final judgment in favor of your petitioner in both causes in equity and to vacate the illegal, improper and *void orders* of Judges Garvin and Howe purporting to reopen the decree pro confesso in violation of the *mandatory* and *injunctive language of Rule 17* of the Rules of Equity and that a writ of prohibition may issue from this Honorable Court forbidding Judge

Howe or Judge Garvin from taking any further proceeding in connection with the motions of the defendants to dismiss and for such and further relief in the premises as shall seem just and equitable.

And your petitioner will ever pray, etc.

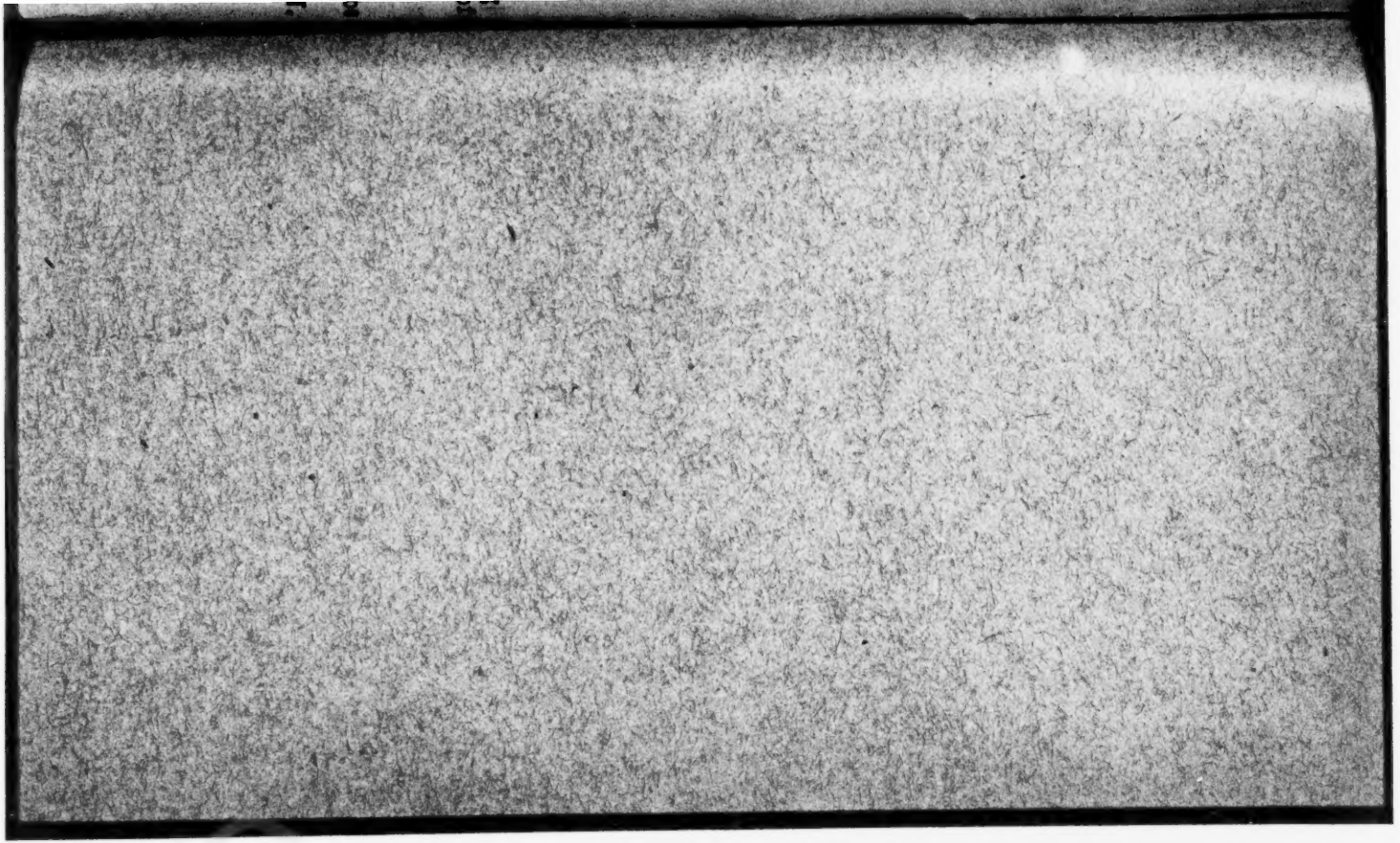
Respectfully submitted,

JAMES J. O'BRIEN,
Petitioner in Person,
P. O. Address,
275 Academy Street,
Astoria, New York.

Dated at New York City, N. Y., this
17th day of April, 1920.

STATE OF NEW YORK SS
CITY & COUNTY OF NEW YORK

JAMES J. O'BRIEN being duly sworn, deposes and says that he is the petitioner above named; that he has read the foregoing petition; that he knows the contents thereof that the same is true to his own knowledge except as to the matters therein stated to be alleged upon information and belief and that as to such matters he believes it to be true.

JAMES J. O'BRIEN.

Sworn to before me this 17th.
day of April, 1920.
JAMES E. WILKINSON, Notary Public,
Queens County #591 Certificate filed
in New York County, New York County
SEAL Clerk's No 280